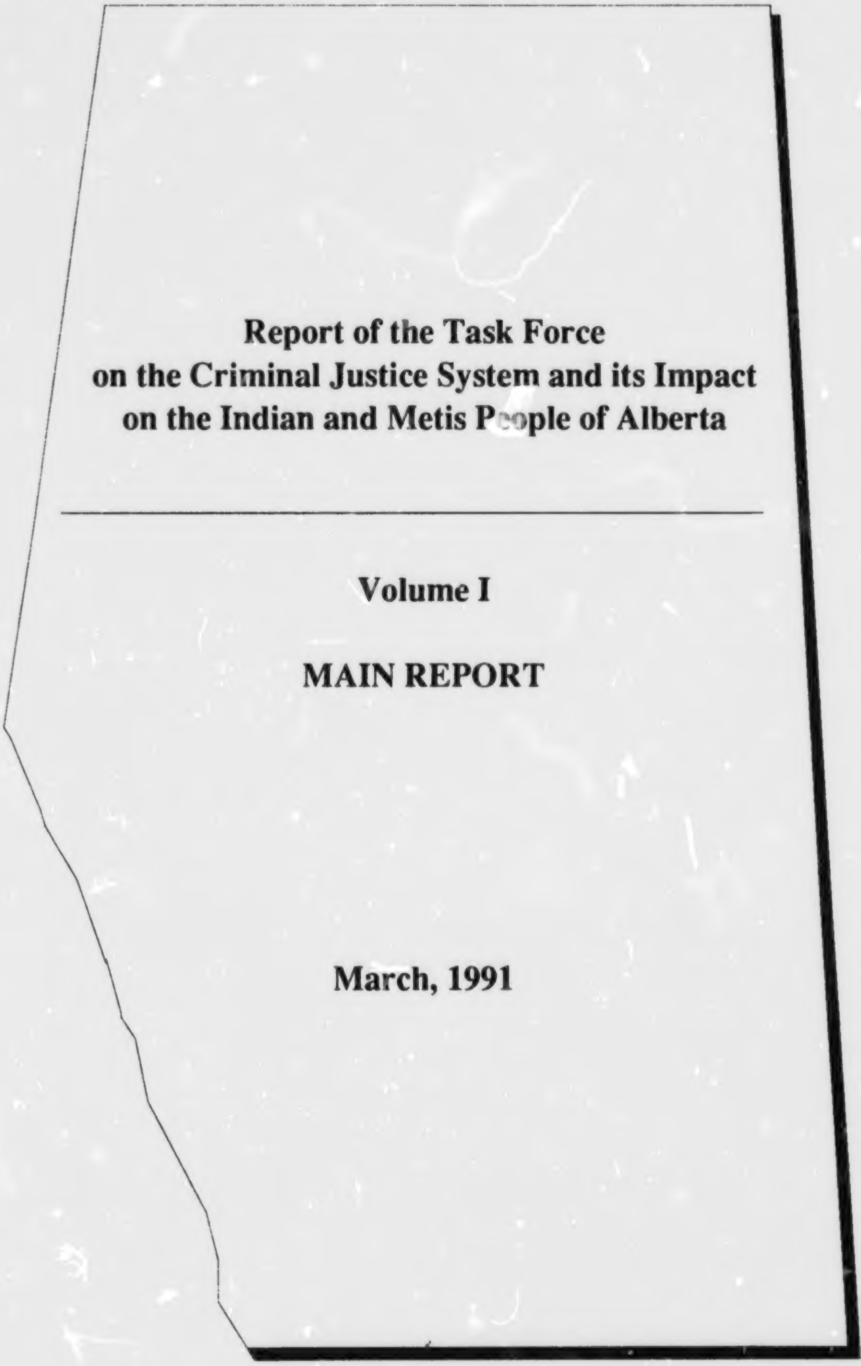
Justice on Trial

Report of the Task Force
on the Criminal Justice System and its Impact
on the Indian and Metis People of Alberta

Volume I Main Report



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Volume I

MAIN REPORT

March, 1991

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91-03316/

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on the Indian and Metis People of Alberta, March 1991

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TASK FORCE ON THE CRIMINAL JUSTICE
SYSTEM AND ITS IMPACT ON THE INDIAN
AND METIS PEOPLE OF ALBERTA

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March 1991

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We, the members of the Task Force appointed to review, report and make recommendations respecting "The Criminal Justice System and its Impact on the Indian and Metis People of Alberta" hereby submit the Report of the Task Force.

The Honourable Mr. Justice Robert Allan Cawsey
Chairman

Leroy Little Bear

Janet Franklin

Cynthia Bertolin

Arnold Galet

Cleve Cooper

Michael Gallagher

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Chairman's Acknowledgements

As Chairman of the Task Force, I acknowledge the dedication and efforts of the Task Force members, each of whom has drafted a portion of this report.

I thank the Chiefs and Councils, the Chairman of the Metis Settlement we visited and the members of the Bands and Settlements for the hospitality they extended to us during our visits and for the frank discussions at our meetings.

All Government departments and agencies, both federal and provincial, have responded promptly and fully to all of our requests for information.

I am grateful to the Executives and members of the Native Brotherhoods and Sisterhoods in our gaols and penitentiaries. They gave us an insight into the Criminal Justice System that could have come from no other source.

I would like to thank the Wardens of the Penitentiaries and the Directors of the Provincial Correctional Institutions and Young Offender Centres for permitting us unsupervised access to inmates.

A special word of thanks must go to Assistant Commissioner (retired) Gordon Greig, the former officer commanding "K" Division, R.C.M.P. and to Chief Superintendent W.R. Spring, the officer in charge of the R.C.M.P. Training Academy. Assistant Commissioner Greig arranged for the Task Force to fly to Regina in an R.C.M.P. airplane, and Chief Superintendent Spring arranged for our accommodation and permitted us to attend a one-day cross-cultural training session with Constables under instruction.

I would like to thank Chief Justice Moore of the Court of Queen's Bench of Alberta for relieving me of my judicial duties to permit me to devote all of my time to the Task Force. Chief Superintendent Cleve Cooper, Michael Gallagher, and Arnold Galet were also assigned on a full-time basis respectively by the R.C.M.P., Correction Services of Canada and the Alberta Department of the Solicitor General.

Janet Franklin, who was appointed by the Alberta Attorney General, gave priority to the needs of the Task Force when they conflicted with her responsibilities as a private practitioner.

Cindy Bertolin interrupted her articles with a law firm at considerable inconvenience to herself.

Leroy Little Bear, a Professor at the University of Lethbridge, contributed his vast knowledge of Indian culture and tradition. His sense of humor enlivened many of our lengthy meetings. In addition, he faced the inconvenience of commuting to Edmonton from Lethbridge for our meetings.

Patrick Delaney, our Administrator, organized our offices, arranged our meetings with various Aboriginal groups, made all travel and accommodation arrangements. Above all, he kept us within our budget.

I would also like to thank Richard Butler, our Researcher and Statistician, who has compiled, analyzed and produced the mass of statistics which form an appendix to this report.

A special word must be said with respect to our secretary, Grace Schuster, whose cheerful nature, skill, ability and patience have made the production of this report possible.

1.0 Introduction

> *The final lesson ... is the lesson of balance, for wisdom teaches how all things fit together. And balance, when applied to the interconnectedness of all human beings, becomes justice. With its aid, the traveller can see all things as they really are. Without it, there can be no peace or security in the affairs of the world.*
>
> *The Sacred Tree*

The Aboriginal people and all levels of Government have concerns about the level of justice provided by the current criminal justice system to Aboriginal people. Unless more balance can be created, justice will remain elusive and discontent will continue. The impact of the criminal justice system on Aboriginal people can be measured by the disproportionate number of Aboriginals in our correctional institutions. Aboriginals are often at the receiving end of what appears to them to be a foreign system of justice delivered to a large extent by non-Aboriginals.

The Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta was created in response to these conditions.

Objective

The overall objective of the Task Force has been defined clearly in the Terms of Reference:

> *to complete a review of the criminal justice system in Alberta as it relates to Indian and Metis people and to provide a report for the Solicitor General of Canada, the Attorney General of Alberta and the Solicitor General of Alberta, which identifies any problems and proposes solutions to ensure the Indian and Metis people receive fair, just and equitable treatment at all stages of the criminal justice process in Alberta.*

Philosophy

To achieve the overall objective, the Task Force has adopted a number of guiding principles. We believe that law deals with human conduct and that conduct cannot be separated from its cultural base. Justice deals with fundamental fairness, equity, and equality. This means that when a minority group is culturally different from the larger society, its perception of law and justice will be different.

We believe that to achieve harmony between the justice system and the Aboriginal people, they must be fully involved in any policy development, program planning and implementation and service delivery with respect to the criminal justice system. The criminal justice system in society exists to perform the function of social control. Social control is exercised by treating those who go through the system in a firm but humane manner. The criminal justice system is not equipped to be the ultimate repository of all social problems. Yet, this is currently one of the roles it fills.

The social problems experienced by Aboriginal people are a result of the socio-economic conditions of impoverishment they face. Alcoholism, poor health, poor education, dangerous and unsanitary housing and unemployment are symptoms of powerlessness. They are not the causes of it.

The criminal justice system can be made more sensitive to the needs of Aboriginal people. However, no meaningful and lasting change can be made to the involvement of Aboriginal people with the criminal justice system without an integrated and comprehensive approach to improve the socio-economic factors which contribute to the problems.

We believe that the imposition of the majority's justice system on the Aboriginal minority results frequently in unfairness and inequity. The reality or possibility of injustice is a legitimate reason for the improvement of the justice system by increasing its flexibility and examining and implementing alternatives.

The criminal justice system is not only penal in nature. Its stated aims and objectives are: prevention, restitution, rehabilitation, deterrence and protection of the public.

We believe that Aboriginal people, both by virtue of their Aboriginal and Treaty rights and by virtue of their cultural and spiritual values and worldview, hold a unique position in the ethnic mosaic of Canadian society. Indians and Metis do not wish to be absorbed by the larger society. They wish to retain their individual history, rights, and spiritual and cultural values.

The Task Force reiterates the principle that all Canadians are entitled to the protection of the rule of law and to the protections provided by the Charter of Rights and Freedoms. We also recognize that society as a whole, and the criminal justice system in particular, must acknowledge Indian and Metis people as the Aboriginal people of Canada, whose cultural and spiritual views and expectations differ from mainstream society.

Issues of fundamental concern to Aboriginal people remain unresolved. Of these, the most important are land claim settlements, Treaty and Aboriginal rights, and sovereignty. Such issues can only be resolved by dialogue between the Government of Canada and Aboriginals. Resolution of the issues will affect the level of involvement of Aboriginal people in the social welfare and criminal justice systems.

Aboriginal communities are at varying stages of social change. As a consequence, they are in varying states of readiness for assuming control of social welfare and criminal justice systems. There is considerable diversity among Aboriginal communities and these communities have different goals and aspirations.

We believe that the members of the larger society and the Aboriginal people can live in harmony. We repeat that, to achieve such harmony, Aboriginal people must be fully involved in any policy development, program planning, and implementation and service delivery with respect to the criminal justice system.

Process

We do not perceive our role to be one of engaging in yet another study or survey of Aboriginal people. It is our responsibility to assess the impact of the criminal justice system on Aboriginal people.

We discovered that some Indian and Metis people were reluctant to co-operate with us or to assist us in our activities. Several Bands did not respond to our request for briefs or presentations nor were they interested in having us visit their reserves or settlements. On the other hand, we received excellent co-operation from the Indian Association of Alberta and the Metis Association of Alberta, certain Indian Bands and Metis Settlements, government agencies, Aboriginal agencies and agencies oriented to the criminal justice system. The media gave extensive coverage to the presence of the Task Force in Aboriginal communities. Some of the coverage was not favourable to the community or the criminal justice system.

Several Indian and Metis groups felt that the Terms of Reference of the Task Force were too restrictive and did not cover the areas they considered to be essential. Socio-economic factors were an example. In addition, the Aboriginal community felt that there should have been more Indian and Metis representation on the Task Force.

The consultative process set out by the Terms of Reference, the extent and complexity of the areas to be examined, and the time limit of one year shaped the format and content of the Task Force's final Report. The Task Force was not established as a judicial inquiry, public inquiry or royal commission. It did not retain counsel, record proceedings or commission external research studies. The statistical information and summary documents in this Report were compiled by one full-time researcher on staff and two contracted consultants.

Most of the information on which our recommendations are based is anecdotal. Some of the recommendations arise from the 130 years of collective experience of the seven Task Force members in the criminal justice system. Our backgrounds include the police, prosecution, superior courts, private law practice and corrections. The appointees of the Indian Association of Alberta and the Metis Association of Alberta, both graduates of law schools, have brought to the Task Force their knowledge of Indian and Metis culture and traditions.

We used several other sources of information. In total, we received fifty-six written submissions. We heard public oral presentations from Bands, Settlements, Indian and Metis organizations, social agencies and government departments. In addition, we visited the Native Brotherhoods in all federal and provincial correctional institutions in Alberta, and visited Indian Reserves, a Metis Settlement, and Aboriginal communities which expressed a desire to meet with the Task Force. Reviews of the findings of other major inquiries and the massive amount of literature on the subject of Indian and Metis people and the criminal justice system also provided extensive information for Task Force members.

In order to increase their personal exposure to the issue of Aboriginal people in the criminal justice system, Task Force members attended a variety of training programs and seminars. These included: the Western Workshop, a project of the Canadian Association of Provincial Court Judges, organized together with the

Canadian Judicial Centre; the Royal Canadian Mounted Police Workshop "Sharing Common Ground"; the Native Law subsection of the Canadian Bar Association (Alberta Branch) training seminar on Aboriginal awareness; and the R.C.M.P. Training Academy cross-cultural training program in Regina. Members of the Task Force also attended several provincial court sittings, and hearings involving Aboriginals before the National Parole Board. Several members of the Task Force went on a "ride-a-long" with the Edmonton Police Service.

The Chairman accompanied the Deputy Solicitor General of Alberta and Assistant Chief Judge Rolf, the Chairman of the Blood Inquiry, to visit the Chairman of the Indian Commission of Ontario, the Deputy Solicitor General of Ontario, Professor Allan Grant who was the Chairman of the Osnaburgh-Windigo Tribal Council Justice Review Committee, the Ontario Provincial Police, and the Six Nations Police Force and Police Commission. One of the Task Force members accompanied the Chiefs of the Lesser Slave Lake Regional Indian Council and the Dean of Law, University of Alberta, to Tucson, Arizona to observe the training of Tribal Court Judges and the operation of Tribal Courts.

As we considered the issues, we kept in mind international, national, and Alberta developments related to the involvement of Aboriginal people in the criminal justice system.

It is our opinion that, within the last five to ten years there has been a marked increase in the devolution of control of many aspects of the criminal justice and social welfare systems from the government to the aboriginal people.

Without a doubt, the relationship between the Aboriginal people of Canada, the Government of Canada, and the people of Canada has changed significantly during our work as a Task Force. It was a mixed blessing that our term of office coincided with "the summer of Indian discontent", as the confrontation in Oka, Quebec, has been called. The Canadian public was awakened to the determination of Indian people to assert their Aboriginal and Treaty rights. Dr. Joe Couture, a Metis Elder and psychologist, described the events at Oka, the Old Man Riverdam in Alberta, the blocking of the Canadian National lines in northern Ontario, and the various blockades elsewhere in Canada, as indicating that the Indian people have reached a point of no return and that Indians and Metis will not tolerate further delay in settling their Aboriginal and Treaty claims. The events of the summer of 1990 consumed the time and attention of many of the Indian and Metis communities to such an extent that they were unwilling or unable to discuss with us the issue of the involvement of Aboriginals in the criminal justice system.

Main Findings

We have made a consistent effort to make our observations and recommendations Aboriginal-specific. It has not always been possible to achieve this. However, it is our position that any recommendation for improvement of the criminal justice system as a whole, can also make it more responsive to Aboriginals, if for no other reason than that Aboriginals are over-represented in that system.

Several of our Terms of Reference overlap with each other. In these instances, we have chosen to make overlapping recommendations. Many of the recommendations made by this Task Force have been made by other Task Forces, Commissions, Inquiries or Studies. We have made these recommendations again, because in our opinion, they have not been implemented fully or appropriately and are still applicable.

The Task Force has drafted recommendations with a full awareness of Government deficits. It is our opinion that many of the recommendations can be implemented by emphasizing prevention instead of incarceration and that funds can be reallocated accordingly.

One of the findings of the Task Force is that the criminal justice system in Alberta does not appear to have a philosophy which applies to all of its components. Consequently, there is no integrated approach to addressing the problems or to proposing solutions to the difficulties experienced by Aboriginals involved with in the criminal justice system. We do not perceive the criminal justice system as attaining its objectives of deterrence, rehabilitation, restitution, and protection of the public. If a philosophy does exist, its effect in Alberta is that more people are charged and that a higher rate of incarceration occurs than in nearly any other province or territory in Canada. The over-representation of Aboriginal people in the system and the over-incarceration of Aboriginal people in the federal and provincial correctional institutions in Alberta is proof that the criminal justice system is failing Aboriginal people.

In our report we recommend that a clear policy statement be developed by government on the purpose of the criminal justice system in Alberta and that such a statement be accompanied by co-ordinated action from the various components of the system to achieve the stated goal.

The Task Force also recommends that the criminal justice system be brought back to the communities it serves. One of our findings is that the criminal justice system has become too centralized and legalistic and generally too removed from the community. As a result, communities are unable to identify with the system. At the same time, the system has failed in achieving its desired goals. This situation holds particularly true for rural and remote communities. The involvement of the community in all aspects of that system is an integral requirement for the successful return of the criminal justice system to the community. Communities must be encouraged to participate in the criminal justice system and take responsibility for that system. Without involvement and responsibility, the community will never identify with the system and without such identification, the system becomes a meaningless oppressor of the community.

The lack of communication between all levels of service providers and Aboriginal people is one of the most serious deficiencies in the existing system. The Task Force was told on numerous occasions that the various components of the criminal justice system do not know the community they serve; that Aboriginal people are never asked their opinion about issues or problems; that Aboriginal people are never asked to participate in the planning and implementation of initiatives; and that Aboriginal people are expected to do as they are told. Although communication is improving, we have found that many of these criticisms are still true. Aboriginal people must be perceived as having a legitimate interest in the administration of the criminal justice system rather than as merely the source of work for that system. We recommend that Aboriginal people be involved in decision-making at all levels of the criminal justice system, including in a service delivery role.

With respect to Aboriginal representation in the criminal justice system, the Task Force recommends that a much greater involvement of Aboriginal Elders be encouraged. Elders hold a unique position of respect and trust in the Aboriginal community. They possess qualities that would be of immense benefit in attempting to develop a criminal justice system capable of being responsive to both Aboriginal and non-Aboriginal needs.

The Task Force also recommends a shift in the focus of government services for Aboriginal people. That shift must be away from incarceration and toward prevention. Prevention should be widely defined as including not only crime prevention, recreation, and treatment for problems such as alcohol and drug abuse, but also education and employment. While such an overall change in the focus of government departments would be of particular benefit to Aboriginal people, it would also benefit non-Aboriginal offenders.

The Task Force recognizes that an emphasis on prevention would require a shifting of program priorities between government departments. However, we also recognize that, compared to its minimum benefit, incarceration occurs at a very high cost to society.

The demographics of the Aboriginal population became very important with respect to preventative programs. Fifty percent of the Aboriginal population is under twenty years of age, and the Aboriginal population grows at a faster rate than the non-Aboriginal population. This implies that, unless more emphasis is placed on prevention, education and employment, particularly for young Aboriginal people, Aboriginal people who could participate in society and be employed will be incarcerated instead, in increasing numbers and at a rapidly increasing cost to society. If allowed to develop this situation would be most detrimental and costly to both to society at large and the Aboriginal community.

Two areas of Aboriginal peoples' involvement with the criminal justice system have received little attention. They are: youth and Aboriginal people in urban centres. The Task Force recommends that these areas be given much higher priority.

Based on our review of the literature, discussions with Aboriginal people, and presentations from Aboriginal groups, we have found that one of the most important areas of concern for the Aboriginal community in general is the plight of its young people. Young Aboriginal people are faced with a range of almost insurmountable problems. These problems include a lack of educational opportunities; a lack of employment opportunities; extremely poor living and housing conditions; family breakdown; physical and sexual abuse, and alcohol and drug abuse; and a generally recognized cultural identity problem resulting from a host of historical conditions forced on the Aboriginal people.

While we recognize that many Aboriginal communities are addressing their problems, we also recognize that many Aboriginal youth live in extremely disadvantaged conditions with little chance of improvement unless concerted action is taken by a concerned government. It is clear that a substantial portion of any prevention program, be it recreation, education, or employment, must target Aboriginal youth. For Aboriginal youth to maximize the opportunities provided, it is also essential that sufficient treatment facilities and post-treatment support programs be developed which focus specifically on the treatment of drug and alcohol problems experienced by youth and families.

Presentations made to the Task Force made it abundantly clear that existing treatment facilities for Aboriginal youth are inadequate and that they require a more comprehensive and co-ordinated approach in their development.

The second area which has been overlooked consistently, concerns Aboriginal people living in urban areas. While it is true that a large portion or 50 - 60% of incarcerated Aboriginal offenders comes from major urban areas, it is also true that no easily identifiable Aboriginal community structure exists in these areas. This fact has made it most difficult to study the problems of urban Aboriginal people. The large number of Aboriginal offenders who come from large urban areas, seen in combination with the continuing migration of Aboriginal people to urban areas, demands that provincial government departments, municipal governments, service delivery agencies, and Aboriginal people address this issue urgently.

One final area of study warrants special mention. It concerns the matter of Aboriginal justice systems. The issue of legal pluralism includes two opposing points of view. On the one hand, there is the trend toward Aboriginal people assuming greater control over criminal justice systems to achieve the stated aim of establishing Aboriginal justice systems based on traditional value and practices. On the other hand, there are the proponents of "one rule of law" who forward the idea of one justice system for all that is capable of responding to the needs of all.

It is clear that the issue of Aboriginal sovereignty remains unresolved between the Government of Canada and Aboriginal First Nations. It is also clear that, while this issue remains unresolved, a comprehensive shift to Aboriginal justice systems is unlikely to occur soon. It is also evident that not all Aboriginal groups will have the capability or will want to assume such responsibilities. It is our position that numerous changes can be made relatively quickly to the existing criminal justice system to make it more sensitive to the needs of Aboriginal people. The first step in this process is the "indigenization" of the criminal justice system as discussed earlier. The Task Force recognizes that intensive indigenization of the criminal justice system, including flexible approaches to sentencing, can, in fact, go a long way toward meeting the wishes of some Aboriginal people.

The review of the criminal justice system in Alberta has convinced the Task Force of the need for a meaningful process to monitor the implementation of recommendations accepted by Government. Such a process should not only be objective and effective, it should also require strong Aboriginal participation.

With respect to implementation, the Task Force senses a political will at the federal and provincial level to address Indian and Metis concerns. The Marshall Inquiry and the early response by the Nova Scotia Government should encourage other inquiries and Task Forces. The appointment of the Aboriginal Justice

Committee in Manitoba and the Blood Inquiry in Alberta, together with the establishment of this Task Force as a joint venture of Canada and Alberta, indicates a determination to identify problems and seek solutions to the problems related to Aboriginals in the criminal justice system. The political will of government will be measured by policy, legislative changes, and the allocation of resources to implement the recommendations of the Commissions and the Task Force.

Our detailed recommendations will show that we, as a Task Force, have responded positively to many of the suggestions made by Aboriginal people. It could be argued that we have gone out of our way to accommodate the needs and hopes of Aboriginal people. If this is true, it has been done to meet the main objective of the Task Force, that of making the criminal justice system more fair, just, and equitable to Aboriginal people.

... the closer one gets towards the completion of a goal, the more difficult the journey becomes.

The Sacred Tree.

2.0 Policing

Preamble

The Task Force has identified problems and offered solutions designed for police to improve conditions or remove barriers to fair, just and equitable treatment of Aboriginal people in their contact with police agencies in Alberta.

Recommendations for increasing police complements for reactive policing for law enforcement purposes will be avoided. These considerations are left to the police agencies and their funders. This point is made in consideration of two facts: the Task Force does not possess the expertise to make these evaluations and it has not reviewed in detail the operation of provincial police forces.

It should be noted that estimated national policing costs are high in comparison to the other components of the Criminal Justice system.

> *Compared to the other components of the Criminal Justice System, policing costs are approximately three times greater than the corrections sector and seven to eight times greater than the courts sector.*[1]

The Task Force hopes that recommendations with respect to policing will lead not to an increase in expenditures, but rather to a re-direction of programming and corresponding funding to reflect more effective utilization of resources. The Task Force applauds the adoption of community-based policing by the major police forces in Alberta as an example of such re-direction.

Policing Jurisdiction Generally

Jurisdiction to provide policing services in Canada is within the mandate of three levels of government: federal, provincial and municipal. The federal government, through the Royal Canadian Mounted Police (R.C.M.P.), has jurisdiction for: the enforcement of all Federal Statutes excluding the Criminal Code, and the enforcement of the Indian Act, including some Band Council by-laws. The provincial government has jurisdiction over the enforcement of the Criminal Code and all Provincial Statutes. Each province assumes responsibility for municipal and provincial policing. Municipal governments are responsible for the enforcement of municipal by-laws.

Alberta does not have its own provincial police force, although one existed in the past. To provide provincial policing, the Solicitor General's Department contracts on behalf of the Province of Alberta with the Government of Canada for the provision of provincial policing service from the Royal Canadian Mounted Police.

With respect to provincial authority to provide municipal police service, most provinces require that cities and towns maintain their own police force once their population has reached a certain number. In Alberta, Section 4 of the Police Act requires that any municipality with a population greater than 2500 people make its own policing arrangements. However, should a municipality not obtain the required size or fail to develop some sort of policing arrangement on its own, then the Solicitor General's Department is charged with the responsibility of providing police services. Usually, the province does this by providing the services of the provincial police force (the R.C.M.P. on contract).

Municipal police enforce the Criminal Code and other Federal Statutes, Provincial Statutes, and municipal by-laws. If the municipal police force is the R.C.M.P., the R.C.M.P. assumes this mandate. The R.C.M.P. currently maintains sixty-one municipal contracts in Alberta. For example, the municipalities of Wetaskiwin, Slave Lake and High Level are policed by the R.C.M.P. under a municipal contract. Edmonton, Calgary, Lethbridge, and Camrose are examples of municipalities which have chosen to establish their own municipal police.

Police Service Available at Municipal Level

Policing alternatives available to municipalities which have exceeded the size limit are paraphrased from Section 4 of the Police Act:

They can contract with the provincial government to engage the provincial police services as a municipal police service. The current provincial police in Alberta is the R.C.M.P. Therefore, the services of the R.C.M.P. will be engaged.

They can contract directly with the Government of Canada for the provision of policing services by the R.C.M.P.

They can contract with another municipality to provide policing services to them;

Several municipalities can join together, which can include the provincial government, to form a regional police force to service an area;

They may establish their own police service.

The Police Act also allows the Solicitor General to enter into special arrangements with individual communities or groups. Section 5 provides:

> 5 (1) *The Solicitor General may*
> (a) *exempt any part of Alberta from the operation of all or any provision of this Act, and*
>
> (b) *make any arrangements or agreements he considers proper for the policing of that part of Alberta exempted under clause (a).*[2]

Special constable appointments can also provide enhanced or flexible police service to a community or municipality. The Police Act provides for such appointments under Section 42:

> 42(1) *The Solicitor General may*
> (a) *appoint a person as a special constable, and*
>
> (b) *subject to the regulations, suspend or cancel the appointment of a special constable.*

(2) *The appointment of a special constable shall*

(a) *be in writing, and*

(b) *specify*

(i) *the authority, responsibility and duties, and*
(ii) *the territorial jurisdiction, of the special constable.*[3]

Jurisdiction to Provide Police Service to Indian People

A recent Task Force Report entitled, "Indian Policing Policy Review (January 1990)," examined the question of jurisdiction. This Task Force concluded that both the federal and provincial governments have constitutional jurisdiction with respect to the provision of police service on Indian reserves.

After a review of issues of policing jurisdiction on reserves, the Indian Affairs Policing Task Force concluded that:

> *The principal impediment to improving and expanding the capability to meet current law enforcement needs remains a lack of clarity on the issue of jurisdiction of the federal, provincial and territorial governments.*[4]

Our Task Force agrees with this conclusion, and considers the lack of clarity a significant problem.

In the Province of Alberta, the Solicitor General's Department and the Department of Indian Affairs and Northern Development both exercise jurisdiction by providing the policing services of the R.C.M.P. and various other arrangements or programs to Indian people on reserves.

The federal and provincial governments agree that off-reserve policing is the jurisdiction of the Provincial Solicitor General. Indian people living off-reserve are considered to be ordinary residents of the province in which they reside. They receive the policing service for which the Provincial Solicitor General has arranged.

Jurisdiction to Provide Police Service to Metis People

Although the Metis are recognized as one of the Aboriginal peoples of Canada, the federal government acknowledges no specific jurisdiction .

As a result, the Metis people are considered to be ordinary residents of the province in which they live, whether they reside on Metis Settlements or outside of an established land base. The provincial Solicitor General's Department has jurisdiction to provide policing services to the Metis of Alberta as it would for any other resident of the province.

The Role of the Police

The duties of the police are set out in Section 38 of the Provincial Police Act as follows:

38(1) *Every police officer is a peace officer and has the authority, responsibility and duty*

(a) *to perform all duties that are necessary*

(i) *to carry out his functions as a peace officer,*
(ii) *to encourage and assist the community in preventing crime,*
(iii) *to encourage and foster a co-operative relationship between the police service and the members of the community, and* (iv) *to apprehend persons who may lawfull be taken into custody, and*

(b) *to execute all warrants and perform all related duties and services.*[5]

The duties of the R.C.M.P. are outlined in the R.C.M.P. Act as follows:

> *It is the duty of members who are peace officers, subject to the orders of the Commissioner,*
>
> *(a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody;*
>
> *(b) to execute all warrants, and perform all duties and services in relation thereto, that may, under this Act or the laws of Canada or the laws in force in any province, be lawfully executed and performed by peace officers;*
>
> *(c) to perform all duties that may be lawfully performed by peace officers in relation to the escort and conveyance of convicts and other persons in custody to or from any courts, places of punishment or confinement, asylums or other places; and*
>
> *(d) to perform such other duties and functions as are prescribed by the Governor in Council or the Commissioner. R.S., c. R-9, s. 18.* [6]

The role of the police, as set out in the Provincial Police Act and the R.C.M.P. Act, is implemented in various ways. Generally, it is accepted that the enforcement component is the reactive component of the job and that the remaining portion of the work, excluding administration and travel, consists largely of pro-active duties which can be defined broadly as including crime prevention and community relations duties.

The pro-active component of policing duties can and does contribute positively to the level of communication and quality of relationship with the Aboriginal community. The Task Force holds that this is equally true for urban and rural Aboriginal communities.

We believe that crime prevention is primarily a community role and that police should contribute, but not be mainly responsible. This will be discussed later in greater detail.

Models of Policing

The ways in which policing services are delivered are evolving quickly and reflect the changing face of Aboriginal communities and their needs. As a result, different policing models have emerged in Alberta. Some models reflect the current movement toward Aboriginal self-government and control by the community of police resources, while others reflect a move toward a greater degree of community input into the existing police forces providing service to them. These models will be discussed later in greater detail .

Indian and Metis Involvement in Criminal Justice

In its brief to the Task Force, the Indigenous Bar Association stated the following:

> *Until Indigenous people are actively involved at all levels in the Criminal Justice System, it will be difficult to foster rapport for indigenous spirituality, laws, customs and traditions. For this reason, it is important to ensure that education and training for personnel in the Criminal Justice System be broadened to include education for Indigenous people as a starting point.* [7]

This statement points at a number of key areas to be considered in relation to the impact of policing on Aboriginal communities.

Some of these key areas are: Aboriginal employment in the Criminal Justice system, for example, as police officers; cross-cultural training, including instruction on Aboriginal issues, by Aboriginal resource persons; Aboriginal involvement in prevention initiatives; and employment opportunities for Aboriginals in Aboriginal communities for the purpose of delivering Aboriginal program services.

Racial Prejudice

Aboriginal people, in prison as well as in the various Aboriginal communities with whom we have been in contact, reported that prejudice against Aboriginals exists at all levels of the Criminal Justice system. Prejudice is a pre-condition to discrimination and when acted upon, results in discriminatory practices. We have heard many accounts of racial prejudice attributed specifically to the police. The perception that police are prejudiced against them is generally shared by Aboriginal people.

Systemic Discrimination

Systemic discrimination exists in the Criminal Justice system. There is no doubt that Aboriginal people are over-represented in this system and that, at best, the equal application of the law has unequal results. Unless evidence is found to support the notion that Indian and Metis people are inherently more criminally-inclined than non-Aboriginal people, this imbalance must be redressed to bring about equitable results for Aboriginal people involved with the Criminal Justice system.

Findings and Recommendations

Term of Reference:

Policing 2 (a)

To review the delivery of policing services to Indian and Metis communities and more specifically, regarding indentifiable Indian and Metis communities, the Task Force will:

i) Examine the existing relationship between members of the Indian and Metis communities and the R.C.M.P.

The Blood Tribe stated in its brief to the Task Force:

> *The Blood Tribe respectfully submits that maintaining the status quo in terms of the criminal justice system and its impact upon members of the Blood Tribe specifically, and all Aboriginal people generally, will only perpetuate the existing involvement of Aboriginal people with the criminal justice system. The Blood Tribe submits that substantial changes are needed in all areas of the criminal justice system particularly in policing, corrections, child welfare, family law and sentencing. Otherwise, the criminal justice system will continue to be responsible for the social disintegration of Aboriginal families, groups and communities. For example, the Blood Tribe advocates that an autonomous tribal police force is needed in order to overcome the deficiencies inherent in the present policing arrangement. Unseasoned police officers are being stationed at the Cardston detachment of the R.C.M.P. in order to give them "hard" experience. These officers are primarily concerned with laying charges too hastily and with doing things by the book and have the least understanding and appreciation of tribal customs and traditions and no community orientation. Hence, their use of discretionary powers in laying changes is virtually nil.*[8]

While recognizing the above sentiment, the Task Force also notes that the relationship between members of the Aboriginal community and the R.C.M.P is complex and multi-faceted, with the prevailing views varying considerably from community to community, be they rural or urban, or Indian or Metis.

The Task Force has found that there are a number of variables that affect the relationship between the community and the police, some of which are:

1. *the age, experience and personal style of the individual Police Officer;*
2. *knowledge and understanding of the community and the people that are policed;*
3. *extent to which Police officers go beyond the traditional reactive style of policing.* [9]
4. *level of service provided to the community.*

Since these factors operate together to produce a different relationship in each R.C.M.P. detachment area, generalizing about the relationship between Aboriginal people and the R.C.M.P. will not be enough to account for the experience of all communities. For example, the Lesser Slave Lake Indian Regional Council conducted a survey of their nine member Bands and concluded that the relationship with the R.C.M.P. ranged from *"good to strained."* [10]

The Alberta Federation of Metis Settlements Association complained that *"settlement members feel that the Police only come around when there is trouble."*[11] The recommendations of the Association were aimed at *"improving relations between the police and the settlements, and improving the R.C.M.P. Special Constable Program."*[12] It was suggested by the Association that:

> *If relations are to be improved the Police should spend more time at the Settlement, specifically for community relations purposes (e.g., home visits). This would allow them to meet the people in their own social environment so they can become more familiar with the lifestyle and culture.*[13]

The Association addressed a complaint, which was also expressed in other Briefs:

> *Settlement members are often stopped in their vehicles, especially in the town that serve their communities, for no reason other than to be asked if they had any alcohol in the vehicle or if they had been drinking.*[14]

Other complaints by the Association revealed a perception that investigations are not always conducted properly. The Task Force has heard this perception expressed in the communities as well. The problem is often attributed to a lack of cultural understanding on the part of the officer(s) involved. Another common complaint of remote communities was:

> *When a Settlement member is arrested on the Settlement, he is usually taken to town. When he is released on his own recognizance he is stranded in town with no transportation.*[15]

In particularly remote communities such as Trout Lake and Peerless Lake, such situations can pose a threat to people's lives under harsh weather conditions.

In its presentation to the Task Force, the Indian Association of Alberta showed the results of a survey conducted by the organization. One of the findings was that 72% of Native respondents believed that the *"Police treat Natives differently than non-Natives and that non-Natives get better treatment."*[16] The survey also showed that of the respondents, *"91% believe there should be more Native policemen."*[17]

In its Brief, the Indian Association asserted:

> *We have confirmed by an extensive opinion survey what we knew from our own knowledge and experience, that is the majority of Indian people do not have confidence in the criminal justice system. Without that confidence particularly with regards to the Police and the Courts the Criminal Justice System cannot serve the vitally important role of inspiring respect for the law among our people.*[18]

Clearly, the relationship between the R.C.M.P. or other police agencies and the Aboriginal community presents an issue of concern. This is a complex and multi-faceted problem, and cannot be solved by an easy answer or single approach. The Indian Association of Alberta made these comments related to this complexity:

> *Our First Nations are varied and diverse. We have different needs, resources and priorities. Our initiatives relating to criminal justice will necessarily vary from the modest objectives of better relations with the R.C.M.P. detachment to a sweeping and comprehensive approach to an alternative criminal justice system involving Indian peacekeepers and Indian Courts.*[19]

It should be stated clearly that, although Aboriginal people criticize the R.C.M.P. , they do not reject the agency out of hand. Rather, they challenge it to meet the policing needs of contemporary Aboriginal people. Andrew Bear Robe, an Indian Association of Alberta Councillor, reflected in the oral presentation of the organization on the historical relationship between Aboriginal people and the R.C.M.P. : *"I am in favour of bettering the relationship between the R.C.M.P. and Native people."*[20]

Regena Crowchild, President of the Indian Association of Alberta, addressed the current R.C.M.P. attitude and response to the Aboriginal community and stated, *"I have seen an improvement in this area."*[21]

The R.C.M.P. too have engaged in a kind of organizational "soul-searching" to define and forge a new relationship with the Aboriginal communities. The process of defining a new relationship is relatively new for the R.C.M.P., as it is for other police forces. The strong recommendation issued in 1988 by the Canadian Human Rights Commission, that Canada's police forces should do much more to *"command the confidence and trust of Aboriginal communities,"*[22] seems to have foreshadowed the current events and changes.

In the 1988-89 "K" Division report which examines the R.C.M.P.'s relationship with Indian communities, R.C.M.P. Commissioner Inkster states:

> *We must also consider a new policing approach for Aboriginal peoples. Our emphasis must be policing* for *native people rather than* of *native people.*[23]

The statement implies a direction. Commissioner Inkster publicly repeated it on May 29, 1990 at the "Sharing Common Ground" Conference in Edmonton.

The "K" Division report recommends that:

> *in order to provide an adequate and community sensitive policing service to Native communities, the Force must maintain an ongoing dialogue with Native organizations, Chiefs and Councils, Elders, Tribal forces and Band Constables and other native involved relevant government agencies and the Native Community as a whole.*[24]

It was also suggested that all detachment Commanders form community policing advisory or consultative committees to deal with the policing concerns of these communities on a regular basis, and to develop a community-based approach to addressing these concerns. The Task Force has been advised that this recommendation has become a directive.

A major shift to community-based policing is now taking place. There is reason to believe that these measures can deal effectively with the gap that currently exists in the relationship with the Aboriginal community. The holding of the "Sharing Common Ground" Conference is commendable and also indicative of a major change in the orientation of senior R.C.M.P. staff. The level of good-will and intent will, however, need to be transferred effectively to the community and field level where most of the day-to-day interaction takes place. The Task Force commends and encourages the development, but observes that a mechanism for auditing or monitoring of the relationship would be of benefit to both the communities and the R.C.M.P.

In his opening remarks at the "Sharing Common Ground" conference, Commissioner Inkster stated:

> *It will be helpful for us, the R.C.M.P. to remember we have made mistakes. It will be counterproductive, however, to dwell on them; we must direct our energies toward strategies that prevent us from repeating our mistakes ... We must respond to community needs through a consultative process; we must be prepared to consider alternatives with the community and in concert with that community decide on a course or courses of action that best suit their needs, whether it is an Indian Reserve, a Metis Settlement or a predominantly non-Native town or city.*[25]

The Commissioner further said that community-based policing in Aboriginal communities had been made the "*number one priority within the force in 1990.*"[26]

The Task Force offers the following summary of problems and factors related to the relationship between Aboriginal people and the R.C.M.P.:

A. The R.C.M.P. are perceived to emphasize unduly reactive policing versus pro-active or preventative community work.

B. The role of the police officer is not clearly defined or understood.

C. People in remote areas often express concern over the inadequacy of police services, both pro-active and reactive.

D. A cultural gap, often combined with a language barrier, is apparent in the relationship of Aboriginals with the R.C.M.P.

E. In our hearings at correctional centres, Aboriginal offenders often reported prejudicial behaviour by the police. Sometimes, physical abuse was also alleged. The Task Force is convinced that the perception of abuse by police is widely held among offenders. In some cases, the same perception was shared by representatives of communities.

F. Inmates and correctional staff reported that, in general, police most often respond negatively when asked for an assessment or recommendation with respect to early release of an Aboriginal offender. While a senior National Parole Board member confirmed this view, he stated that the R.C.M.P. , in comparison to urban police forces, was more positive and often provided constructive comments regarding release plans.

G. Communication and liaison with Indian Reserves, communities and Metis Settlements require improvement if a *"partnership and ownership"* between the R.C.M.P. and the Native community is to be established effectively.[27]

H. Aboriginal communities do not have an effective voice in determining policing priorities on the reserves and in settlements. Mechanisms for effective feedback must be developed.

I. Many Aboriginals do not understand the Criminal Justice system and do not know how it works. This causes further alienation of the Aboriginal community from mainstream society.

Added to the problems noted above, or perhaps lying at the root of a number of them, is the fact that Aboriginal communities have different expectations of police officers than non-Aboriginal communities. Aboriginal people see police officers more as "peace-keepers" or "problem-solvers" than enforcers of the law. This will be discussed later in this Report.

The Task Force Recommends:

2.1 That the police, in consultation with Aboriginal leaders, respond to the policing priorities and needs as defined by Aboriginal communities. At present, the R.C.M.P. and Aboriginal communities are establishing non-political aboriginal advisory committees which are consulted about community needs. We encourage this development and recommend that this activity include Indian Reserves, Metis Settlements, and communities with a significant Aboriginal population.

2.2 That the R.C.M.P. in the field receive Aboriginal awareness training geared to sensitizing front-line officers to local Aboriginal culture. We have been advised that the R.C.M.P. is currently in the planning stages of providing such training to "K" Division front-line officers.

2.3 That an external system be established for the auditing of the R.C.M.P.'s relationship with the Aboriginal community. This audit must include Aboriginal people and be geared to determining the level of user and community satisfaction.

2.4 That the R.C.M.P. accelerate efforts to recruit Aboriginals. This measure is important to attain credibility in the eyes of the community while providing a culturally- sensitive police service. At the same time, it is acknowledged that the R.C.M.P. has recruited significantly greater numbers of Aboriginals than its municipal counterparts in Edmonton, Calgary, and particularly Lethbridge.

2.5 That the R.C.M.P. be involved in any community workshops or legal education sessions for Aboriginal people which address police practices, policies, and other relevant matters, and that this involvement continue to be a

responsibility of R.C.M.P. officers to the community. Legal education is required for residents of Aboriginal communities so that they will be less vulnerable to the abuse of their rights and will know the law and understand it. While this is a matter of community crime prevention and lies outside of the police role proper, R.C.M.P. involvement in such community sessions is critical to the development of a good relationship with the community.

2.6 That an overall crime prevention program be initiated by communities, with community members to co-ordinate and deliver services. This program should not be confused with the role of the police.

2.7 That the federal and provincial governments direct crime prevention funds to Aboriginal communities, and that community members co-ordinate and deliver these prevention services in consultation with the police. Crime prevention funds should be directed to community members and/or Aboriginal organizations in a position to deliver this service.

Term of Reference:

Policing 2(a)(ii)

Examine the existing lines of communication between the R.C.M.P. and municipal police forces and Indian and Metis leaders to determine if existing police practices are responsive to Indian and Metis concerns, in particular the degree of Indian and Metis input into the identification of enforcement problems and the development of solutions.

The first professional police force was created in England in the 1820's.[28] Its founding principle was:

> *To recognize always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.*[29]

Police services across Canada, including some in Alberta, are shifting from a response to crime or reactive form of policing to a community-based or preventive style of policing. This shift is in line with the basic philosophy of policing. The concept of community-based policing:

> *... relies on the philosophy that the Police are the people and the people are the Police and the notion that the community must have input into the identification of their crime problems, a voice in the development of solutions to these problems, lend some measure of ownership and participation in the programs developed to achieve these solutions.*[30]

Community-based policing requires that law enforcement agencies give up some control by allowing a sharing of power to set direction for the police agency's activities. Two-way communication between the community and the police agency is essential for the community-based policing model to be effective.

To examine communications between Aboriginal leaders and the police services in Alberta, we must be aware of how their groups are organized.

Indian organizations, starting from the national organizations to the most community-based are:

- Native Council of Canada, Assembly of First Nations, and Prairie Treaty Nations Alliance (national)
- Indian Association of Alberta (provincial)
- Tribal Councils (regional)
- Chief and Councils of Reserves (local)

The representative organizations of the Metis are:

- Metis National Council (national)
- Metis Association of Alberta (provincial)
- Metis Zone Offices (regional)
- Metis Locals (community-based)

Alberta is unique in that Metis people have a land-base. Separate governing structures exist for representation of the eight Settlements:

- Federation of Metis Settlements (provincial)
- Settlement Councils (community-based)

In addition to these prominent structures, there are many other organizations and individuals with leadership roles in Aboriginal communities. At minimum, all policing agencies in Alberta should maintain liaison or consult with these organizations at the appropriate corresponding level.

The Task Force Recommends:

2.8 That at minimum, the R.C.M.P. and municipal police services in Alberta establish and maintain liaison and communications with Indian and Metis organizations of Alberta at the corresponding level of jurisdiction.

In an effort to be more responsive to Aboriginal concerns, several police services have established liaison positions. This is a positive move to establishing links with the Aboriginal community. The Task Force commends those police services which have established such positions and support them actively. However, police services should not view this effort as the entire solution. The "K" Division Report states:

> *No one person at any level can bear the total responsibility of generating and maintaining this positive dialogue and all must share the responsibility.*[31]

Several Aboriginal communities have said that they want to have contact with more than one designated officer. They have stated that they would like to be visited and patrolled by a variety of officers. They want to receive programming from more than one officer or have programs offered by non-Aboriginal personnel as well as by specifically mandated officers. These statements are based on the perception that, when a 3B Special Constable is in place, other members of the R.C.M.P. may be inclined to abdicate community liaison work in the Aboriginal communities.

Some of the police services in Alberta have specific non-enforcement programs directed at Aboriginal communities. Any non-enforcement program which brings law enforcement personnel into an Aboriginal community has a positive effect on communication between R.C.M.P. and Aboriginals. The Task Force acknowledges that the R.C.M.P. is active in non-enforcement programming for the Aboriginal people of Alberta.

Communication Between the Aboriginal Community and the R.C.M.P.

The "K" Division Report concluded that:

> *The most evident deficiency in the service being provided to the Native sector of Alberta is our lack of ongoing liaison at all levels.* [32]

The Task Force has heard accounts of incidents that may have resulted from communication problems between Aboriginal communities and the R.C.M.P. Generally, comments can be broken down into problems related to:

A. language and cultural barriers;
B. lack of input into policing issues;
C. insufficient information flowing back to the communities about investigations or complaints;
D. lack of understanding with respect to what each party's expectations are about policing matters or roles;
E. little or no information going back to communities about the status of recruiting applications;
F. lack of non-enforcement contact between Aboriginal people and the police.

Some comments in Briefs relate to the issues, for example:

> *No contact from local R.C.M.P. to Chief and Council of reported crimes on Reserve.*[33]

> *According to presently understood policy, community members are forbidden to touch, or move the victim of an accident ... such situations cause bitterness and confusion as the people feel powerless to act, being bound by outside controls.*[34]

> *With no way to communicate concerns to each other, they have developed a relationship based on tolerance rather than trust.*[35]

We have heard, seen and read many things that lead us to conclude that at present, there are significant shortcomings in communication between the Aboriginal people and the R.C.M.P. To address the problem, which is acknowledged in its own reports, the R.C.M.P. has embarked on a number of initiatives to start building bridges between the police and the Aboriginal community. The "Sharing Common Ground" conference was one recent major initiative. The goal of the conference was:

> *To improve the level of understanding and communication between the Native people of Alberta and the Police, through social and cultural exchange, and by developing recommendations for future action to address mutual concerns.*[36]

Implementation of recommendations from the "Sharing Common Ground" conference and "K" Division's Native Policing Study should have a positive impact on the current communication difficulties between the parties. However, the Task Force sees ground for additional recommendations.

The Task Force Recommends:

2.9 That the government of Alberta, in consultation with Aboriginal organizations, develop a process to ensure the ongoing input from and participation by Aboriginal organizations in the development of policing policy and initiatives.

2.10 That R.C.M.P. detachments together with Aboriginal communities develop a forum or process for ensuring that local communities have input into the identification of problems and the development of solutions.

2.11 That the current trend to establish sub-detachments and workstations in remote and rural areas, or on lands reserved for Indian and Metis people continue when and where requested by the community and when and where feasible.

2.12 That, if the Detachment provides service to an Aboriginal community, the R.C.M.P. recruit local Aboriginal people to non-police positions in the detachment area.

2.13 That R.C.M.P. detachments work with Aboriginal communities to improve existing policies or practices by developing acceptable methods or practices to communicate information back to the community.

2.14 That when and where possible, R.C.M.P. members spend time in Aboriginal communities in a non-enforcement police capacity.

2.15 That R.C.M.P. members be encouraged to participate in non-police activities and community events in Aboriginal communities, and that Aboriginal communities actively invite the R.C.M.P. to participate.

Communication Between the Aboriginal Community and Municipal Police Services

There are four major City Police Services in Alberta and seven Municipal Police Services. In addition, the R.C.M.P., on contract, provides municipal police services to sixty-one municipalities in Alberta.

The non-Aboriginal-specific statistics gathered by the Task Force show that municipal police forces in Alberta account for the largest volume of Criminal Code charging activity. With respect to Criminal Code offences, excluding impaired driving, only 34% of persons charged were charged by the R.C.M.P. compared to 66% by non-R.C.M.P. police forces.[37] The R.C.M.P. laid charges under the Criminal Code in 39.1% of violent offences and 32.6% of property offences, compared to 60.9% and 67.4% for non-R.C.M.P. police services.[38] The statistics show clearly that municipal police forces spend a much higher proportion of their time (81.4%) charging persons under the Criminal Code than the R.C.M.P. which spends almost half of its time (47.6%) dealing with provincial statutory offences. It is the R.C.M.P. which, under the Provincial Policing Contract, staffs rural detachments which are primarily responsible for policing reserves and isolated Aboriginal communities. The large urban Edmonton and Calgary police forces are responsible for charging 58.3% of all persons charged with Criminal Code offences in Alberta during 1989, excluding persons charged for impaired driving[39] and 55.2% of all persons charged with federal statutory offences.

Our research indicates that approximately 13.7% of all persons charged in Edmonton and Calgary were Aboriginal: 18.6% in Edmonton and 8.4% in Calgary.[40] Some police organizations stated that they dealt with a significant number of Aboriginal people which was not necessarily reflected in the charging statistics. For example, in the meeting of the Task Force with representatives of the Calgary Police Service, the police said that the bulk of their minority workload involved Aboriginals. We have reason to believe that contact between police and Aboriginals in Edmonton is even greater because Edmonton has a larger Aboriginal population.

In response to our request for information about communication issues, seven municipal police organizations responded to the Task Force. Some of their comments were:

> *We do not hold regular annual or semi-annual meetings with any group of persons, inclusive of Native ... we have not addressed any concept of "townhouse meetings" or any devise to create an environment where the Native or Metis are a part of input to policy revision ...* [41]
>
> *Aside from the Community Service Officer position, there is no formal mechanism for the input of Native people into the identification of enforcement programs and the development of solutions.* [42]
>
> *No formal mechanisms currently exist for the exclusive use of Native peoples to identify enforcement problems and to suggest solutions. They are, however, able to provide input through many other formal channels, i.e., at their community level - the district offices and zone personnel.*[43]

It has become clear to the Task Force that the gateways to the Criminal Justice system for Aboriginal people are the largest in urban centres, especially in Calgary, Edmonton and Lethbridge. Municipal police forces together with urban Aboriginal organizations must begin to develop approaches to problem-solving.

The police services of Edmonton and Calgary stated that they have a Native liaison officer or position. The smaller municipal police agencies said that they have no liaison position even when the municipality has a significant Aboriginal population. An example is the City of Lethbridge Police Service. To make community-based policing effective, a willingness must exist on the part of the police agency to share responsibility for policing initiatives, programs and priorities to ensure that the service provided is not merely reactive.

Establishment of a liaison officer to develop communication links with Aboriginal communities is a minimal, yet important mechanism. Once contact is established, the police agency and the Aboriginal community can start to work co-operatively on developing initiatives and solutions.

Liaison and formal meetings should not be limited to Aboriginal groups whose focus is the urban centre. Many municipalities are near Aboriginal communities. We were told frequently about the flow of people in and out of the urban centre. Often, people arrested in a municipality give as their residence a place other than the municipality. If a municipality is near Aboriginal communities, municipal police should establish and maintain liaison with these surrounding communities.

The R.C.M.P. police sixty-one municipalities in Alberta. Some R.C.M.P. detachments have dual mandates requiring a certain portion of their members to police a municipality whereas other members police the surrounding rural area. Comments and recommendations made in this section also apply to the R.C.M.P. when they are responsible for policing a municipality.

The Task Force Recommends:

2.16 That when and where a municipality has a significant number of Aboriginal residents, or a disproportionate amount of police workload involves Aboriginals, they be represented on the Police Commission.

2.17 That municipal policing agencies become involved in and respond to invitations to social and cultural events hosted by Aboriginal communities located in or near the municipalities, and that Aboriginal people extend invitations to police agencies when hosting community events.

2.18 That Aboriginal communities be encouraged to develop local advisory groups to address policing issues in municipalities.

2.19 That municipal police agencies work with Aboriginal communities to improve existing policies or practices by developing acceptable methods or practices to communicate information back to the community.

2.20 That when and where a disproportionate amount of police workload involves Aboriginals, the municipal police in consultation with Aboriginal organizations develop a process to allow them input into, or participation in the development of programs and other initiatives, as well as in planning and service delivery.

2.21 That when and where a large number of Aboriginal people reside in a municipality or a disproportionate amount of the police workload involves Aboriginals, a municipal police service actively and affirmatively recruit Aboriginal people to policing and non- policing positions in the police service.

2.22 That a position be established for liaison with Aboriginal communities by municipal police services which do not currently have such a position and have a workload which involves Aboriginals disproportionately, or serve a community with a large Aboriginal population.

2.23 That, when and where possible, Aboriginal members of municipal police services be involved in policing activities related to the Aboriginal community.

2.24 That municipal police who have a disproportionate workload of Aboriginals or serve a community with a significant Aboriginal population, be in regular contact with local and provincial levels of Aboriginal leadership, without being limited to the boundaries of the municipality. It is important that municipal police services establish and maintain liaison with surrounding Aboriginal communities.

Term of Reference:

Policing 2 (a) (iii)

Examine the existing level of police service in the Indian and Metis communities, the working relationship between the R.C.M.P. personnel and band special constables, and the effectiveness of special programs such as crime prevention initiatives and other forms of police/community involvement.

Existing Levels of Police Service

Our options in examining existing police service were limited by resources, time and the established consultation process. Therefore, our approach to this matter is based largely on the perceptions of the Aboriginal people.

The Task Force encountered a difference in perception of the role of and service delivery by the police. On the one hand, Aboriginal people told us that police personnel should be peacekeepers, stressing prevention, reconciliation, mediation and as a last resort, punishment. On the other hand, many police officers considered it to be their role to detect crime and apprehend transgressors - aspects of reactive policing. This difference in expectations helps to explain some of the criticisms the Task Force has heard. Some R.C.M.P. members have said that high crime rates in some Aboriginal communities would justify an increased police presence or an increase in person hours allocated to serve the community. Unfortunately, this concern focuses on a reaction to crime. When Aboriginal groups addressed an increased police presence, they argued that resources be spent on non-reactive measures such as prevention, diversion and reconciliation. Seemingly similar requests for an increase in police personnel serve to illustrate the differing perceptions of the role of the police and some of the dissatisfaction expressed by Aboriginal people regarding the current provision of police service.

Policing to Alberta's Aboriginal communities can be classified as:

A. policing services provided to rural or remote Aboriginal communities (including Reserves and Settlements), and
B. policing services provided to Aboriginal people living in municipal or urban settings.

Police Service to Rural/Remote Indian and Metis Communities

Under the provincial contract for service between Alberta and the R.C.M.P., most Aboriginal communities receive the same level of service as other residents of Alberta. However, some Indian communities have developed or negotiated an enhanced police service. An enhanced policing arrangement is a service delivery which exceeds the services that would normally be allocated to a community under provincial contract. More will be said about alternative police arrangements later in this report.

The R.C.M.P. have the bulk of the responsibility for policing Aboriginal people. In Northern Alberta, this is a heavy responsibility considering obstacles such as the large size of detachment areas, transportation problems, and weather conditions. In remote Alberta, the provision or lack of provision of services, by police or other service providers, is an acute problem. Some of the criticism the Task Force has heard about lack of routine patrols and extended response times is due, in part, to the distances that must be travelled in some of the Northern communities. This matter must be addressed by all parties who provide, pay for and receive police service.

Assessment of the workload of an R.C.M.P. detachment to determine the number of person-hours a detachment area requires poses another problem for police. Police state that currently, only reactive policing statistics are taken into account. The Task Force has heard the tale of a "Catch 22" situation for many detachments. When the police are engaged in focused and intensive efforts related to patrols and crime prevention initiatives, the reactive statistics related to crime in the detachment area decrease. As a result, a detachment is deemed to need fewer person-hours and police staff members are transferred. Because fewer people are available in the detachment, the detachment can no longer engage in the previous pro-active activities because of a loss of personnel. As a consequence the reactive statistics increase again. It may take a while before this happens. We are unaware of the length of the cycle, but the existence of a problem is clear. This problem was addressed in the National R.C.M.P. Report entitled "Policing for Aboriginal Canadians: The R.C.M.P. Role." To reduce the impact of this staffing dilemma, the report recommended:

> *73. That in line with the forces community-based policing model, we: (3) ensure crime prevention efforts within Native communities receive equal measurement to detection, investigation and arrest when detachment workload statistics are reviewed.*[44]

The Task Force commends this approach.

Some of the problems expressed by remote or rural Aboriginal communities regarding policing services were:

A. Aboriginal communities have a perception that response time to calls is currently inadequate. The Task Force has heard that the response time can take days in some cases, depending on the location of the community, the situation at the detachment, and the nature of the complaint.

B. There is a perception that non-Aboriginal R.C.M.P. are reluctant to become involved in policing activities in Aboriginal communities, especially where a Native Special Constable is stationed in the detachment area, and that non-Aboriginal officers only give attention to these Aboriginal communities in a reactive policing capacity.

C. We have heard that the present call diverter system used by the R.C.M.P. detachments causes problems for Aboriginal people for two reasons:
   (a) The person answering the call for police assistance is not familiar with the community or residents calling in. In some cases, this has resulted in frustration experienced by the caller and a withdrawal for the request for assistance.
   (b) The person answering the call is fluent in English and French, whereas the person requesting the assistance may only be able to speak English as a second language.

D. Several communities expressed the concern that they are currently only being provided with reactive policing services. They feel they receive inadequate routine patrols, and state that there is a general lack of police visibility.

E. Concern was expressed about the inability of police officers to speak the language of the community or to understand its culture.

F. Communities expressed concern about insufficient feed-back or communication related to investigations or crime statistics in their community.

G. There is a perception that complaints made by Aboriginals do not receive the same conscientious investigation as complaints made by non-Aboriginals. However, vigorous investigation appears to result when an Aboriginal person is accused of criminal activity by a non-Aboriginal person.

H. There is a perception that Aboriginal people are policed in a discriminatory manner, even in their home communities. It was stated in a number of different ways that police are more inclined to stop and question Aboriginal persons than non-Aboriginal persons regardless of whether they are on foot or in motor vehicles.

I. Some Indian reserves expressed considerable frustration about non-enforcement of their Band By-laws by the R.C.M.P.

The report, entitled "Native Policing Study" prepared by "K" Division of the R.C.M.P. in 1988/89, concluded on the basis of statistical information that insufficient time or person-hours were recorded on Indian reserves in proportion to the amount of crime reported in the statistics from those reserves. With respect to these statistics, the report stated:

> *This could be interpreted to support the Native claim that the policing services they receive are largely reactive and not geared to correcting and altering disproportionate high crime patterns.*[45]

The report went on to say that:

> *the survey of people in various Indian communities in Alberta indicated half the people surveyed were unhappy with the police service provided to them.*[46]

The Task Force sees a need for ensuring more effective policing services to Aboriginal people in rural and remote Alberta.

The Task Force Recommends:

2.25 That the provision of policing service to rural and remote Alberta be reviewed by the parties who provide and receive the police service in order to address service delivery issues and options.

2.26 That, at the request of an Aboriginal community , a detachment, satellite detachment, or workstation be established in the community where feasible. Use of these facilities should be made an efficient and effective component of police duties.

2.27 That police training programs emphasize the exercise of discretion and the development of alternative problem-solving approaches to conducting police work, which are more in tune with expectations of Aboriginals of the role of a police officer in their communities.

2.28 That the current process of taking complaints, or call diverter system, be altered and made sensitive to the needs of Aboriginal communities.

2.29 That crime prevention and other pro-active police initiatives in Aboriginal communities be given the same weight as other activities in the assessment of detachment workload.

Police Service to Urban and Municipal Aboriginal Communities

In response to a question from the Task Force, Aboriginal presenters stated that Aboriginal communities existed in urban centres.

> *The Native people have created pockets within the districts of the cities that they reside within. Although normally associated with the 'drag area' these communal groupings are located within the residential districts of the city.*[47]

It is possible to identify pockets of Aboriginal people in most major cities in Alberta. In municipalities in northern Alberta, identification is even easier.

Urban centres in Alberta are responding increasingly to the concerns of Aboriginal people. In Edmonton, a Task Force was established to examine inner city crime. Wetaskiwin recently established a Task Force to examine policing issues in relation to Aboriginal people. The City of Calgary has had an Aboriginal Urban Affairs Committee since 1979, which includes police representation. The profile of Aboriginal issues has had some impact on the development of these initiatives.

The lack of communication and co-ordination between urban police and agencies and organizations dealing with Aboriginals poses a problem. This problem is aggravated because, instead of there being one single organization to advocate strongly on behalf of urban Aboriginals, there are several Aboriginal service providers in each city. This situation, in itself, is not a problem. However, lack of knowledge about these organizations causes difficulties. The Brief from Native Counselling Services of Alberta states:

> *Another option that rarely is taken advantage of is the networking with Native care providers to address policing concerns. As the police have the first-hand knowledge of the families in crisis, the sharing of this information would (be) beneficial to the clients, as well as, alerting the service agencies. Neither the police or N.C.S.A. has established what could be called a working rapport, to provide intervention or support services to the Native clients that they share. This should become a priority for both of these services in the near future.* [48]

The Task Force agrees. It is essential that municipal police and urban Aboriginal organizations network with each other and use each other in a supportive manner.

Aboriginal people, whether they live on a reserve or in a city, share the view that the role of the police is that of peacekeeper.

> *With an extremely large Native population residing in the large urban centres, there is a need to provide a different style of police service(s) to these residents.*[49]

To facilitate the development of peacekeeping policing in urban settings, Native Counselling Services of Alberta proposed that:

> *By targeting services to (predominantly Aboriginal) districts such as foot patrol, the police can provide a more effective service to the Native people. This more personalized process of policing allows for contact with the Native population at the community level, something that is essential if a communication level is to be established. There are, however, few Constables that have an understanding of the cultural or spiritual backgrounds of Native people. This understanding is also important as many of these people have moved into the cities from rural communities go into distress after living in the cities for a short period of time.* [50]

Several municipal police services in Alberta have foot patrol programs. The Task Force commends their initiative. Aboriginal people should have input into such programming or be able to provide feedback to the police service to ensure that the policing service is delivered in a manner they can accept and respect.

The Task Force Recommends:

2.30 That foot patrol programs be established in urban centres with districts with large Aboriginal populations.

2.31 That foot patrol officers receive extensive and on-going Aboriginal awareness training.

2.32 That municipal police agencies in co-operation with urban Aboriginal service agencies establish an inter-agency working group to co-ordinate service delivery to

Aboriginal people. This group should have as many representatives from Aboriginal service providers as possible.

2.33 **That Aboriginal spokesgroups in urban centres, for example, Canadian Native Friendship Centres or Metis Locals, be approached by municipal police agencies on an on-going basis for the purpose of identifying the concerns or needs for service of the Aboriginal community.**

Working Relationships Between the R.C.M.P. and Band Constables

The most recent program statement from the Department of Indian Affairs and Northern Development with respect to policing services on Indian reserves pertaining to Band Constables is contained in Circular No. 55, issued in September 24th, 1971 and up-dated in January, 1990 especially for Alberta. The stated objective of the Band Constable program is described in Circular No. 55 as follows:

> *The objective of the Band Constabulary, over and above the matters of Band jurisdiction, is to supplement locally the senior police forces, but not to supplant them. Co-operation therefore is essential between the local R.C.M.P./Provincial Police.*
>
> *Also, it must be remembered that policing is more than patrol and arrest. It is as much a question of bringing to the community an understanding and respect for the law. This is particularly true of the Town or Village Constable who must depend to a great extent upon the goodwill of the people for his effectiveness. Children especially may be beneficially influenced by a thoughtful and considerate peace officer whose interest in serving the community is daily demonstrated by his constructive attitude and approach to his job. From time to time, he may find occasion to speak about the place of the law in the community to the young people in school or in their clubs, or to homemakers and other groups of adults.*[51]

In addition to their duties as the enforcement arm of a Band with respect to Band By-laws and looking after matters of a local nature outside the jurisdiction of the R.C.M.P., it was the expectation that local Band Constables would aid or act as resources to senior police forces in matters outside the jurisdiction of the Band Constables.

With respect to communication and liaison with the R.C.M.P., Circular No. 55 states the following:

> *Band Governments and Band Constables are encouraged to maintain a good working relationship with the R.C.M.P. who in most instances are to be called in for infractions beyond the Band Constable's authority.*[52]

Circular No. 55 also states:

> *Because of the varying circumstances between Reserves and Provinces, no firm rule can be laid down as to the actual duties and responsibilities of the Band Constables and the R.C.M.P. and the relationship of each. These should be worked out by the Band Council in discussion with the local R.C.M.P./Provincial Police Detachment.*[53]

This situation results from the manner in which Band Constables are empowered, a process which varies from province to province. In some parts of Canada, Band Constables are appointed supernumerary Special Constables under the R.C.M.P. Act, whereas in Alberta, Band Constables are empowered under the Police Act. Even within the provincial Police Act, there is considerable variation of the enforcement authority that may be conferred on the Band Constable. For example, in Alberta a Band Constable's authority to enforce laws may range from enforcement of Band By-laws only to the duties of a fully-empowered peace officer equipped with a side arm, able to enforce any provincial or federal statute.

Some of the problems or issues with respect to Circular 55 Band Constables were brought to the attention of the Task Force:

A. Some Indian Bands expressed considerable frustration over the inability to have their Band By-laws enforced when they have chosen not to employ a Band Constable.
B. Difficulty having an Indian Band By-law prosecuted once it is enforced.
C. There is a perception that Band Constables are not politically independent.

This Task Force was not sufficiently exposed to Band Constables to come to a general conclusion about the working relationship they maintain with the R.C.M.P., the matter was not addressed in Briefs. However, the Head Report says:

> *As matters stand now, the relationship between our Force and the band constables in Eastern Canada is noteworthy and positive, while in western and northern Canada, it ranges from shallow to non-existent.*[54]

The "K" Division Report states:

> *Throughout the division we found both adversative and co-operative working relationships.*[55]

During our visits to Aboriginal communities, we met a Band Constable at the Whitefish Lake Indian Reserve. He started out in his duties with limited law enforcement jurisdiction, but when we met him, he had obtained the full status of a peace officer. The local R.C.M.P. Detachment which provides service to Whitefish Lake works with the Band Constable to improve the service to the increasing satisfaction of the community. It was clear to us that the R.C.M.P., the community, and the Band Constable all had a great deal of respect for each other, and that their working relationship was continuously evolving as new circumstances arose.

Regardless of the present character of the relationship, several points about the role of the Band Constable should be made. These were well described in one of the Briefs:

> *The Native Constable was able to provide a unique service over that of his non-Native counterpart. Seen as more than just a peace officer, the Native Constable represents equality of treatment for community residents and a role model for Native youth.*[56]

Band Constables are people who are willing to serve their communities. They must be recognized as a valuable resource to both the community and police agencies. Efforts must be made to involve Band Constables, regardless of their authority, in monitoring policy development pertaining to a reserve, without excluding the input of Band Councils or other citizens' groups wishing to become involved. Because of their proximity to the community and job function or description, Band Constables are also excellent resources for helping to administer or develop crime prevention or pro-active policing duties together with the community or the R.C.M.P. In addition, they show interest in a career in law enforcement, which should be encouraged or facilitated by the local R.C.M.P. detachment. Local detachments should aid in the development of skills and training of Band Constables through co-operative working relationships. Aiding and supporting Band Constables leads to several positive benefits for the R.C.M.P.: increased community acceptance, greater understanding of the community, and more effective delivery of policing services.

The Task Force Recommends:

2.34 That Indian Bands and the R.C.M.P. meet for the purpose of resolving jurisdiction disputes related to enforcement of Band By-law prosecutions.

2.35 That Canada, Alberta and Indian organizations meet for the purpose of resolving jurisdiction disputes related to Band By-law prosecutions.

2.36 That the R.C.M.P. and Band Constables develop a protocol for liaison and communication to deal with matters pertaining to reserves, while recognizing that there are overlapping areas of jurisdiction.

2.37 That Indian Bands consider making Band Constables accountable to a body external to and independent of the Band Council.

2.38 That R.C.M.P. conferences or meetings about Aboriginal policing issues involve Band Constables as participants or presenters where appropriate.

2.39 That Band Constables be invited to participate in interagency committees of service providers where such committees exist.

Special Programs

Generally, crime prevention and pro-active initiatives of police services fall into one of the following categories:

A. Education about the law, the Criminal Justice system, or crime;

B. Police-community relations, liaison, or communications initiatives;

C. Programs which enhance police effectiveness;

D. Programs which increase police visibility;

E. Programs developed to educate the public about the role of the police and the services offered;

F. Programs developed to focus on a specific problem or issue.

It is worth noting that police agencies in Alberta are maintaining some level of pro-active police work. Police services have informed us that, as a result of their paid and voluntary efforts, criminal activity is reduced. Although this statement would be difficult to quantify, it is apparent that there is a connection between increased police visibility and reduction in crime in a community. However, it appears that in the Aboriginal community, crime prevention initiatives fall short of the mark.

> *The system in general, and crime prevention tactics in particular, have not been very effective in the Native community. The great over-representation of Native people incarcerated in Correctional Institutions is evidence of this.*[57]

A number of questions must be asked when we examine why crime prevention initiatives to date are relatively ineffective. First, we must ask if it is the role of policing agencies to provide crime prevention programs to the Aboriginal community. The initial response would be "yes." Their profession seems to qualify police officers for crime prevention. However, that same profession disqualifies them. The very nature of daily police work causes prevention activities to focus on better ways to identify or detect crime, on programs that focus on shortening response times, and on a host of other activities that facilitate effective policing. These activities may well reduce crime, but mostly, they facilitate ways of detecting crime better or faster. This is not to say that police services should not play a significant role in crime prevention programs or initiatives. However, police should not be the only people responsible for crime prevention nor should police be the focal point. Any involvement with the Aboriginal community in a non-enforcement capacity can only strengthen police-community relations. The Task Force heard requests from many Aboriginal communities for more crime prevention activities and programs. Based on a survey of Aboriginal communities, one of the conclusions of the "K" Division Native Policing Study (1988/89) was:

> *While community members would like to see more services in general being provided, they were particularly dissatisfied with the amount of time spent on community relations and crime prevention.*[58]

We know that Indian and Metis communities, urban as well as rural, are concerned about crime rates in their areas. They seek solutions, and in doing so, they usually look to the R.C.M.P. in rural communities. This may be because the R.C.M.P. is one of the few service providers who have continuing contact with a community. However, for reasons previously stated, policing agencies should not be the sole providers of crime prevention programs. Crime prevention initiatives should be culturally appropriate and sensitive to the needs of the Aboriginal community. The Task Force raises the question of whether non-Aboriginal R.C.M.P. personnel are equipped to deliver or design such programs.

Another factor is that pro-active policing in rural areas currently receives little attention due to manpower constraints. In addition, because of a seemingly endless demand for reactive policing, it is likely that any allocation made to pro-active policing will quickly be absorbed by reactive law enforcement. Evidence for this trend is found in both the Head and "K" Division reports which reveal that Native Special Constables, who were to have spent most of their time performing proactive policing duties, were diverted to reactive policing to assist with detachment workloads. For these reasons, the R.C.M.P. should have a significant role and continue to be involved in crime prevention programs in the community as much as its resources will allow.

The question remains of who, other than the police, should have responsibility for crime prevention. We submit that everyone carries this responsibility, but the community should have the primary role.

Some communities wish to operate their own crime prevention initiatives, using community youth centres or community-operated youth programs as the focal point.

The Task Force favours the community approach to crime prevention because it is generally requested by communities which are prepared to organize around this need. In addition, this kind of preventive approach can form a base program capable of including a broad spectrum of specific preventive initiatives ranging from recreational activities for youth to supervision of offenders with community dispositions. The program can also include, if necessary, specific counselling services related to addiction and family violence. Programs should be flexible, with priorities determined by the community. Funding should be co-ordinated among responsible agencies, departments, and governments. Communities which have requested this type of program include the following: Assumption, Peerless Lake, Trout Lake, Loon Lake, and Fort Chipewyan. However, there is no clearing-house or co-ordinator of broad social services. As a result, Aboriginal people are caught or lost between the mutually exclusive mandates of provincial government departments or between the mutually exclusive mandates of the federal and provincial levels of government.

Every service provider, government department, agency, and individual should be involved in crime prevention. To develop meaningful preventive programs and initiatives, it is useful to examine some reasons why Aboriginal people come into contact with the criminal justice system.

- lack of employment;
- alcoholism and substance abuse;
- residual effects of residential schools or foster homes;
- lack of parenting skills;
- low educational levels;
- lack of recreational facilities;
- family breakdown and violence;
- low self-esteem;
- cultural breakdown;
- generally, lack of access to services.

This list is not exhaustive, but the recurrence of these problems, described in the communities we visited and in the Briefs we received, is alarming. Pitted against this list of fundamental social problems,

> *current crime prevention projects such as Operation Identification, Lady Beware, Lock It or Lose It, are not going to make much of an impression.*[59]

These social problems may not be the direct cause of crime but they are certainly contributing factors. For example, in many of the communities we visited we asked questions about school facilities and educational opportunities. We were informed that the schools were physically adequate, but that generally, they could only accommodate children up to grade nine. To continue their education, children were expected to travel by bus to a school outside of their community or to relocate to another community altogether. It is well known that children are highly impressionable during adolescence. Nevertheless, Aboriginal adolescents must leave their home communities, and be without the guidance of their parents and the support of their community. We have been told that some children leave school because they are homesick, some leave because they end up in bad company, and others drop out because their parents cannot afford the little extras that high school children want. If education is a solution, then it must be promoted. Alberta Education states in its Brief:

> *We know that every inmate costs $4,000 a month to keep in confinement; we also know it costs the same $4,000 to educate a child in school for a whole year ... as the saying goes, "you can*

> *pay me now or pay me later." The real sadness is that far too many Native students pay now* and *pay later.*[60]

This example illustrates how limitations on one system, in this case education, may result in Aboriginal youth coming into conflict with the law. We must realize that a large budget for essential services costs us less than an even larger budget for Criminal Justice Correctional Services. As one community stated:

> *We know that with improved services, many problems could be lessened or eliminated before they become serious matters* .[61]

An ounce of prevention costs less than a pound of cure!

Preventive measures in Aboriginal communities would, because of the factors Aboriginals say contribute to crime, involve a community development approach. In addition to dealing with those problems communities consider pressing, such an approach also ensures a relevant and culturally sensitive response. Transferring of resources and control over programs to the communities will have spin-off effects. Some of these benefits are economic development such as employment and facilities, and individual development such as leadership skills, role models, and marketable employment skills.

We have been in contact with communities which are in the beginning stages of a more community-based approach to problem solving and prevention. In some rural and remote areas of Alberta, inter-agency committees of service providers are in place which meet to co-ordinate services to Aboriginal communities. This is a positive first step. Because the approach is multi-disciplinary, people are less likely to go without assistance and or many organizations can come together to pool resources to formulate solutions and programs. However, this approach would be strengthened by allowing the communities to have representation on these committees and by allowing them to state their views on programs and essential services needed. The best approach would be for communities themselves to control and deliver the services to Aboriginal communities. The Talking Drum Youth Program is an example of this last model. This program operates in several communities.The Task Force met with the people involved in the program in the Dene Tha' community of Assumption. The Talking Drum Program offers a range of services to youth, including: alcohol, drug and solvent abuse programming; recreational activities such as wilderness survival camps; cultural activities; educational opportunities; peer support and counselling; promotion of communication between youth and parents and Elders; and crime prevention. In their Brief to the Task Force, the spokesman for the Talking Drum Program said that:

> *The success of the program is evident through the personal development of a number of youth. There has also been a substantial decrease in the number of youth in conflict with the Justice System.*[62]

The Talking Drum Program involves various jurisdictions because of the lack of local services and the size of the community itself. The community as well as presenters stated that the holistic approach to helping and developing the youth of this Indian community was very effective. However, the very approach that made the program effective caused problems in funding. Because the activity could not be fitted into a social services, recreation, crime prevention, or cultural program, obtaining funding was difficult at best. This is partly the result of a funding approach adopted by urban centres, which is not relevant to a small, remote, Aboriginal community. Urban centres have many one-service agencies. This segmented approach is more workable in cities because of the urban population base. However, in a remote or rural Aboriginal community, a service or program is needed which is more in line with the Talking Drum multi-program or cross-jurisdictional approach. We should not expect a small, remote Aboriginal community to program in the same way as it is done in the cities, and urban funding criteria should not be applied. As one presenter stated, government departments must look for reasons to say yes to Aboriginal projects and programs instead of finding reasons to say no.

In its recommendations, the Task Force bears in mind that some communities are willing to take over crime prevention, whereas others will choose to have crime prevention remain the responsibility of the police or other service providers.

The Task Force Recommends:

2.40 That police services continue to be involved in pro-active and preventative policing endeavours, only limited by their resources. In developing initiatives, police should have meaningful input from the Aboriginal community to ensure the initiatives are relevant and culturally sensitive.

2.41 That service providers, for example, social services, Solicitor General personnel, police, health personnel, and the Aboriginal communities form an inter-agency working group which includes local Aboriginal community members as representatives.

2.42 That, when and where possible, resources for prevention programming be transferred to Aboriginal communities, and that programs be delivered by community members.

2.43 That funding agencies acknowledge that programs initiated by Aboriginal communities cannot be assessed or funded based on a segmented urban style of service delivery. Innovation, flexibility, and co-operation or joint funding between agencies is imperative to ensure that good initiatives receive proper support and resources.

2.44 That service providers engage in a pro-active approach to service delivery in Aboriginal communities. That is, that service agencies address the needs and try to develop solutions in co-operation with the Aboriginal community.

2.45 That Aboriginal communities acknowledge that criminal justice is an important issue to all community members, and that they place a higher priority on criminal justice issues, especially crime prevention.

Term of Reference:

Policing 2(a)(iv)

Review the impact of the R.C.M.P. Special Constable program in relation to the original objectives of the program in light of current needs.

The R.C.M.P. outlined in its Brief the development and evolution of the Native Special Constable Program (Option 3(b)).

> *In 1972, the Department of Indian Affairs and Northern Development (DIAND) commissioned a Task Force to conduct a Canada wide study into policing on Indian reserves.... The study report was entitled "Report of Task Force Policing on Reserves, January 8, 1973," and was released in that year. Within this report a number of options were provided for the provision of police services to Indian reserves. They were as follows:*
>
> *Option 1 "Band Council Policing"*
>
> *(a) civil by-laws enforcement only*
> *(b) civil by-laws and minor offences under federal and provincial laws*
> *(c) all federal and provincial laws enforcement.*
>
> *Option 2 "Municipal Policing"*
>
> *(a) "purchase" services from existing forces*
> *(b) province considers reserve as a municipality for policing purposes.*
> *(c) "use" of existing police services.*
>
> *Option 3 "Third Area"*
>
> *(a) separate Indian police force*
> *(b) an Indian branch or contingent of an existing police force, of which it would be an integral part.*[63]

In 1973, the federal government approved Option 3(b) as the most viable approach. In Alberta, Option 3(b) was accepted by the provincial government and the R.C.M.P., as a component of the provincial policing service provided by the R.C.M.P.[64]

Testimony presented by counsel on behalf of the R.C.M.P. to the Blood Inquiry in Lethbridge indicated that the reasons for the creation of the R.C.M.P. 3B Program included the following:

> *(a) the R.C.M.P. had a critical need for more members of Native extraction;*
>
> *(b) many Native applicants could not meet the R.C.M.P.'s visual acuity, or educational standards for regular members;*
>
> *(c) the R.C.M.P. were reluctant to accept, as regular members, anyone with any form of criminal record;*
>
> *(d) the program would provide the members with educational, training and promotional opportunities;*
>
> *(e) the Constables could be part of an established institutional structure including salaries and pension benefits.*[65]

In 1973, two levels of policing were in place in Alberta: the large municipal police forces and all other policing by the R.C.M.P. Option 3(B) was implemented in the latter category to allow for an *"Indian contingent of an existing Police Force, of which it would be an integral part."*[66]

The R.C.M.P. hoped to achieve the following by implementing the program:

> 1. *To provide improved policing services to Indian Reserves and Indian people by the employment of Indian Constables.*
>
> 2. *To commence a program whereby Indian people would be policed to a considerable extent by their own people under the supervision and direction of experienced R.C.M.P. personnel.*

3. *To develop and create a feeling and subsequent acceptance by Band Councils and Indian people of a greater responsibility for law enforcement on Indian Reserves amongst Indian people.*

4. *To establish a vehicle (the Indian Constables) for better communications and understanding between the Police and Indian community generally.*

5. *To provide an opportunity for Indian individuals interested in law enforcement to receive training and experience as Police Constables with a view of a career as fully qualified Police Constables with the same opportunities as are available to personnel of the R.C.M.P. or any other Police Force.*[67]

A generic job description was developed:

(a) *Under the general supervision of the Detachment Commander, investigates and enforces uncomplex provisions of the Criminal Code, diversified Federal, Provincial or Territorial Statutes and Municipal by-laws; assists senior investigators in the investigation and enforcement of the law and performs related duties.*

(b) *Under the existing preventative oriented policing concept, assist in the development of a better rapport between the R.C.M.P. and the community.*[68]

Since its inception, the program has grown to include all contract policing provinces. Although national in scope, the program has not been "tied to a set of rules or concrete national policy." The R.C.M.P. states the following: "Each Division has been allowed to control and develop its own working strategies for the program."[69]

The 3(b) program, which was initially Indian-specific, grew over time into a Native Special Constable Program, involving both Indian and Metis recruits. To encourage Aboriginals to join the R.C.M.P. as Special Constables, *"the basic qualifications were made quite flexible..."*:

(a) *Minimum height could be lowered when candidate possessed other compensating factors.*

(b) *Grade X or equivalent preferred, however, lower grades would be considered.*

(c) *Applicants would write the R.C.M.P. Educational Examination, however, it would be used as a guide only to determine the candidate's overall suitability.*[70]

The policy of the R.C.M.P. requires currently that the Native Special Constables spend 80% of their duty time on Reserves and in Native communities with 60% of their total time to be spent on enforcement and investigation of less complex matters with the remaining 40% to be spent on crime prevention/Police community relations.[71]

It should be noted that this policy differs from the anecdotal information provided to the Task Force by field staff of the R.C.M.P. and by the communities which are policed. The demand for reactive policing seems to have led to a much lesser emphasis on the crime prevention and community relations components of the job description.

The Province of Alberta funds 54% of the 3(b) Native Special Constable Program and 46% is provided by the Department of Indian and Northern Affairs, Canada. All positions have been supernumerary, in that they are added to the normal complement required to provide provincial policing services.

The current "K" Division philosophy in Alberta in relation to the use of Special Constables is that wherever possible, Special Constables should be posted *"outside of their home community, but in a community which shares their language and cultural background."*[72]

In the fall of 1988, "K" Division conducted a Special Constable Seminar for its Native Special Constables. A survey showed that the Constables had likes and dislikes which were similar to those recorded in other divisions.

Problems with the 3(b) program have been reported in Robert H. Head's "Study of Policing for Aboriginal Canadians - The R.C.M.P. Role." They include:

(a) *Native Constables doing the same work as Regular Members but receiving less pay and less training.*

(b) *Annual assessments - using Regular Member standards to judge performance.*

(c) *No career advancement in the program.*

(d) *Job descriptions not followed - not enough time for crime prevention and police-community relations programs.*

(e) *3(B) program directed toward policing benefits rather than Native community benefits.*

(f) *No red serge for Native Special Constables and no dress uniform.*

(g) *Having to wear Special Constable shoulder flashes.*

(h) *Training needs for Special Constables not being met.*

(i) *No transfers within and outside the Province - long-term postings.*

(j) *No consistency in the federal/provincial/local management of 3(B) program.*

(k) *Stereotyping of Native Special Constables - discrimination.*

(l) *Not enough Native Special Constables.*

(m) *No pay for being bilingual in the Native language.*

(n) *Not wanting to be a community liaison officer.*[73]

In addition to the above problems, a major concern or drawback of the program arose as a consequence of the assignment of Special Constables to routine reactive policing duties. In this regard, Head reports:

> *In the beginning, all 3b Special Constables were considered to be surplus to detachment establishment strength and their presence was not included in the workload statistics. In recent years, however, that has changed, resulting in frustration for our local managers, from detachment commander to division commanding officer. On one hand, they are supposed to be using the Special Constable primarily in the role of police-community relations but at the same time, their response-to-call workload has increased to the point where special constables have to assume the full range of regular member constable duties.*[74]

Reflecting some of the dislikes reported by Special Constables, Head reports:

> *Citizens from the various communities also view our Special Constables as "second class" police persons, they wish to see their own people advance in the organization but they know this is not possible if they remain as Special Constables.*[75]

The Task Force was impressed by the Aboriginal Special Constables we met. Our experience has also shown that they are well received by most Aboriginal communities. Clearly, Aboriginals prefer to be policed by Aboriginals.

The Special Constables have acted as role models for the Aboriginal community. The pro-active or community relations component of the job has generally been viewed by the Aboriginal community as a necessary function and more in keeping with Aboriginal expectations of the role of a police officer, often referred to as a "peace-keeper" role. When the Constables are not used in the role originally defined for them, Aboriginal communities generally lament that situation, as expressed by the Alberta Federation of Metis Settlement Association:

> *The Special Constable has a different job description from the regular member but still performs much of the same duties. They perform crime prevention and investigative duties and police community relations. This conflict creates uncertainties for the Special Constable over responsibilities and priorities. If he is involved in too much police work there is no time for community relations and vice-versa. The program should evaluate the Special Constable on a different basis, perhaps by putting more emphasis on the community relations aspects of his duties.*[76]

The Task Force concludes that the program has been successful in the following areas:

- Improved policing to the Aboriginal community.

- More Aboriginal involvement in the policing function.

- Improved communication and understanding between Aboriginal people and the Police.

- The provision of career opportunities for Aboriginal recruits.

- The provision of positive role models for Aboriginal youth.

While the above successes are real advances in Aboriginal policing, the gains constitute only a small foundation. However, this basis can be used for further improvement. In his summation of the program, Head[77] states that:

> *Our Native Special Constable program sprouted from option 3 "b" and was initiated in order that the Force could, during a relative short period of time, recruit Natives for the job of providing policing services to Natives. To that end, it has been successful. The Native communities and the Force have both matured to the point where we should now look forward to an enhanced program ... we should now ask whether or not the Special Constable program has outlived its usefulness and if we should be looking at its replacement with something more attuned to the 1990's.*

Based on his findings, Head recommended *"that the Force abolish the Native and/or Indian Special Constable designation."* Commissioner Inkster did just that on May 29, 1990 in his opening address to the Aboriginal Policing Conference in Edmonton.

Although the Special Constable designation has been removed, it is unclear how the 3(B) program will develop. Indications from the R.C.M.P., the Department of Indian and Northern Affairs, Canada (INAC) Development, and the Alberta Solicitor General's Department suggest that the funding for the program remains intact, with the objective of providing Aboriginal policing.

The Task Force Recommends:

2.46 That the R.C.M.P., the Department of the Alberta Solicitor General, and the Department of Indian Affairs and Northern Development articulate clearly their intent with respect to the policing of Aboriginal people in Alberta, particularly in light of the recent change made in the status of the Special Constables.

2.47 That the 3(B) program be changed to an affirmative action program geared to accelerating the recruitment of Aboriginals.

2.48 That Aboriginal Constables be re-oriented or that their mandate be re-adjusted to the task of community relations and pro-active policing. The Task Force has been told that this initiative may already be under-way.

2.49 That the R.C.M.P. build upon the successes of the 3(B) program with respect to Aboriginal recruitment. The program is the most successful of the Aboriginal recruitment initiatives which have come to the attention of the Task Force. We conclude that, in spite of its drawbacks, the program contains some ingredients of success.

Term of Reference:

Policing 2(b)

As it relates to Indian and Metis people in urban and isolated settings, to review existing relationships between Indian and Metis people and municipal police forces and the R.C.M.P.

The relationship between the R.C.M.P. and the community it serves or polices has been discussed in Section 2 (a) (i). It was stated that, in general, problems exist and that Aboriginals require, and in some cases demand, more control over and input into policing priorities in their respective communities. The R.C.M.P. have affirmed their commitment to share this "common ground."

With respect to municipal police forces, it is clear that a low formal level of liaison exists between these police forces and the urban Aboriginals. This is particularly disconcerting because 50 - 60% of the incarcerated Aboriginal population comes from the cities.[78] A large part of the problem is the lack of an Aboriginal organization or agency which speaks with "one voice" in the representation of urban Aboriginal people in conflict with the law. In view of this fact, the police must make special efforts to foster a meaningful liaison and relationship.

In its oral presentation to the Task Force, Native Counselling Services of Alberta stated that its relationship with the Edmonton, Calgary and Lethbridge Police Services was less than satisfactory, particularly because the establishment of a good working relationship was not considered to be a "top priority" for the police forces. However, Native Counselling Services viewed the R.C.M.P. as fostering a good level of co-operation.[79]

Given the lack of community organization vis-à-vis the Criminal Justice system, the Task Force finds it difficult to assess urban Aboriginal-police relationships with any authority. Anecdotal comments heard by the Task Force about municipal forces have come from rural and urban Aboriginal people who have had encounters with municipal forces. Again, the perception is negative and there is little evidence of a good relationship. Discussions with the inmate population have made it clear that a large cultural and communication gap exists.

Despite these considerations, we have heard from both Edmonton and Calgary City police officials that they are fully prepared to work toward the establishment of an effective working relationship. The Edmonton City Police, in its Brief, keeps in mind the potential gap between words and deeds when it says

> *needless to say, concepts and philosophical statements of purpose remain unfulfilled promises until they are put into practice.*[80]

Both Police Services are actively pursuing the practice of community-based policing in an attempt to respond to the *"emerging needs"*[81] of the community. In this way they work toward the establishment of a relationship. The Edmonton City Police commented on this development and stated that

> *the Service should no longer be seen in its traditional role of being an exclusive agent of law enforcement and punitive action, but rather as a participant in social development and change.*[82]

In its Response to "Request for Information", the Calgary City Police stated that

> *no 'formal' mechanisms currently exist for the exclusive use of Native peoples to identify enforcement problems and to suggest solutions.*[83]

A subsequent meeting with Calgary police officials revealed that the newly implemented Outreach Program is designed to "improve relationships." However, the program is multi-cultural in orientation rather than Aboriginal-specific.

In Edmonton, a similar approach of "community outreach" by the City Police has been multi-culturally based and the emphasis is on police as a promoter of minority interaction. Four visible minority civilians are employed as Community Service Officers. One of these is Aboriginal. No Aboriginal-specific channels of communication appear to exist at the senior levels.

The Lethbridge Police force stated that there may be a need for a Native Liaison Officer, but only four hours per week would be required. The Task Force disagrees with this position. Given that this force employs no Aboriginal officers at all, and further, in view of the large Aboriginal population both in and around Lethbridge, it is imperative that this force dedicate, a minimum of one full-time Aboriginal liaison officer to liaison services.

The Taber Municipal Police also stated that no formal lines of communication exist, even though 19% of its workload involves Aboriginals. Most municipal police forces should address vigorously the concerns about the relationship identified by the Aboriginal community. This is particularly true in view of the fact that 50 - 60% of Aboriginal people incarcerated committed the crime in an urban environment. Essentially, without concerted effort, 50 - 60% of the problem currently under review will not be addressed.

As noted earlier in Edmonton and Calgary, the thrust of police operations is toward community-based policing. While this is a positive move, the Task Force is of the opinion that the effort must be Aboriginal-specific in communities which have a high concentration of Aboriginals. In Edmonton, the Edmonton City Police reports several of these communities of which the inner city is the largest. We have been informed that in Calgary, communities with a large Aboriginal population can also be identified.

The Calgary Aboriginal Urban Affairs Committee of the City of Calgary impressed the Task Force as a good mechanism for addressing Aboriginal concerns and needs in the urban area by means of one structure. The committee has contact with the police and City Council. However, some frustration was expressed by the Committee with not having a direct reporting relationship to City Council.

A similar committee would be a useful structure for all sizable municipalities. It is the view of the Task Force that the magnitude of the problem deserves a concentrated, sincere approach at the highest levels.

Related to the above is the observation that the number of Aboriginal people migrating to urban areas is increasing due to the lack of housing available on reserves for the large number of Registered Indians. Forty percent (40%) of all Indians now reside away from the reserves.[84] The changing demographic picture is also influenced by the high birth rate of the Aboriginal population in general. The on-reserve birth rate is three times the National average.[85] The 1986 Canada census shows that 50% of the Aboriginal population in Alberta was, at that time, under the age of twenty years.

It is clear that it is imperative for municipal police forces as well as for other Criminal Justice and civic agencies to foster a good relationship and to establish channels of communication with the urban Aboriginal community.

As stated earlier, there are a number of Aboriginal service organizations which deal with Aboriginal people in the cities. However, no co-ordinated effort is apparent. The Native Friendship Centre in Edmonton, for example, does not even have a physical facility as a centre for its activities.

In view of this problem, Aboriginal organizations must also take a leadership role. In particular, the Indian Association of Alberta and the Metis Association of Alberta can be more active in Criminal Justice matters affecting Aboriginal people in urban areas. Native Counselling Services of Alberta, among other Aboriginal service providers, could also be a valuable resource to police and other agencies in relating to urban Aboriginals involved with the Criminal Justice system.

The Task Force Recommends:

2.50 That the R.C.M.P. and municipal police force Chiefs establish formal communication channels with leaders or representatives of the respective Aboriginal communities. We are encouraged by the initiative of the R.C.M.P. "K" Division which has recently formed an Elders' Advisory Committee to the Commanding Officer.

2.51 That the Indian Association of Alberta and the Metis Association of Alberta take a leadership role in relation to the problem of urban

Aboriginal people in conflict with the Criminal Justice system.

2.52 That community policing and police prevention programs be Aboriginal-specific in identifiable Aboriginal communities in urban areas.

2.53 That Aboriginal Constables be stationed in identifiable communities with high Aboriginal populations.

2.54 That Native Friendship Centres and other local Aboriginal service agencies in urban and rural areas be used as channels for liaison between the Aboriginal community and the police officer working at the "zone" level. The Task Force encourages the establishment of this relationship where it is not currently in place.

2.55 That municipal police services place a high priority on the establishment of good working relationships with the Aboriginal communities and that this relationship be reflected in Aboriginal-specific community outreach and liaison programs,with activity levels and resources proportionate to the Aboriginal workload.

2.56 That Native Counselling Services of Alberta and other Aboriginal service organizations be recognized and used as appropriate resources in the absence of an organized community group which can represent urban Aboriginal people with respect to Criminal Justice issues.

2.57 That all sizable municipalities with a significant Aboriginal population form Urban Aboriginal Affairs Committees to include among general concerns, Aboriginal Justice/Police issues. The Task Force has been advised by the Mayor of Edmonton that plans are being developed for an Aboriginal Advisory Committee. The Task Force applauds this move and urges the City to give this committee a high profile in civic affairs.

2.58 That urban police services establish an effective liaison with reserves and surrounding communities. The Task Force was impressed by the effort in this respect made by the Calgary Police Service.

Term of Reference:

Policing 2(c)

To review and assess the current recruit training and other in-service training programs of the R.C.M.P. and municipal police forces in so far as this training relates to Indian and Metis cultural awareness and understanding.

"Multiculturalism" forms the starting point for training in the R.C.M.P. and municipal police forces. This presents a problem, or common pitfall in that Aboriginal awareness is addressed on a basis of equality with other cultures. This equal application or even-handedness results in an inequity of result because Aboriginal people constitute by far the largest ethnic proportion of the police workload, both from a "charges" and an actual contact perspective.

Although it is clearly recognized that police services must be multiculturally sensitive, it is equally clear that, given the disproportionately large number of Aboriginal people involved with the Criminal Justice system, a specific Aboriginal-only awareness program is more appropriate than a broader multicultural program of which Aboriginal culture is only a part.

The above comment is particularly true of municipalities which have a significant number of Aboriginal residents. In Calgary, for example, the police force reports that the actual Aboriginal workload based on Natives charged is 8.4%. In a meeting with Calgary City police staff, the Task Force was told that the actual contact with Aboriginals by Calgary City police is considerably higher. In Edmonton the municipal police force reports a 19% workload based on Aboriginals charged. The Lethbridge City police was unable to provide an estimate of its Aboriginal workload, but the high percentage of Aboriginals in the Lethbridge Correctional Centre (40%) and information gathered from discussions with the Aboriginals in the Lethbridge area indicate significant contact.

Taber and Coaldale are the other two communities with a non-R.C.M.P. police service which reported significant active contact with Aboriginals.

The Task Force recognizes that smaller police forces lack the necessary resources to provide Aboriginal-specific training in a significant manner. Therefore, a centralized Aboriginal awareness training centre may be in order.

Information from Briefs and from meetings with some municipal police forces shows clearly that Calgary and Edmonton have well developed cross-cultural training programs. However, these programs must be Aboriginal-specific and distinct from the multicultural orientation, particularly because 30% of provincial inmates are Aboriginal. In other words, specific cultural sensitivity to the First Nation status of Aboriginal people is required. Only then can the concern of the Aboriginal community be met. This was expressed by the Yellowhead Tribal Council: *"The attitudes of the law enforcers appears to be the biggest concern."*[86]

The comment from the Yellowhead Tribal Council is one of many. In this case, the criticism was directed at the police. Similar views were expressed in relation to other criminal justice agencies as a result of the belief that the respective officials in these agencies reflect the values and views of the dominant society of which they are a part. In short, if cultural insensitivity is to be reduced, much more must be done to educate both Criminal Justice personnel as well as the public at large. The Task Force also observed that police forces generally do not distinguish adequately between Aboriginal cultures in their cross-cultural training. A greater understanding of differences as well as similarities can lead to a higher level of cultural sensitivity on the part of police officers in the field.

With respect to cross-cultural training or the Aboriginal component of this training, we note that the lecture style of presentation at the introductory level does not lend itself to a heightening of cultural awareness or sensitivity. Rather, it serves to disseminate information. It is recommended that a more interactive format be adopted at the introductory level which makes use of Aboriginal resources, and of group discussion and interaction techniques.

With respect to the R.C.M.P., the Task Force was invited to the R.C.M.P. Training Academy in Regina to review the Aboriginal component of the cross-cultural training program. This component is composed of seven hours of classroom training preceded by a four hour general introduction to multi-culturalism. In addition, a seven hour program addresses the Chinese, Vietnamese and Sikh cultures.

The Task Force noted that the R.C.M.P. instructor, who was non-Aboriginal, had a good rapport with the students and, as a result, the information was well received. While the presentation was introductory and readily understood by the recruits, the lecture appeared to be geared more to the provision of information and descriptive categorization in relation to Aboriginal issues and associated legal definitions than to the heightening of sensitivity to Aboriginal culture. Nevertheless, the presentation impressed us as a good foundation or introduction to Aboriginal policing.

A manual called "Selection of Readings" was provided to the recruits. The Task Force considers this manual to be a good teaching aid.

With a view to the improvement of the R.C.M.P. training program, we suggest that a greater distinction be made between the Indian and Metis cultures. Aboriginal spirituality must also be included and Aboriginal staff and/or external Aboriginal resources should, in our view, be included to enhance this program. A good starting point would be consultation with Aboriginal community leaders.

Our earlier comments about the lack of specific Aboriginal awareness programs apply also to the R.C.M.P. from a workload perspective. The single largest ethnic or cultural minority group with whom the R.C.M.P. deals Canada-wide is probably the Aboriginal population. This is no less true for Alberta, both in urban and rural areas. The seven hours now scheduled should, in our opinion, be increased in view of the fact that a total of six months is dedicated to the preparation of the recruit for field service.

Discussions with senior Academy staff made it apparent to us that the R.C.M.P. may be unduly concerned about the requirements of Canada's National Multi-Cultural Policy and Official Bilingualism. For example, one officer thought that bringing in Aboriginal resource people who were not bilingual might lead to a complaint or a request for translation services. We also heard the concern expressed that all ethnic minority groups must be treated equally. The above comments are especially applicable to the R.C.M.P. as most of its rural detachments in Alberta have some Aboriginal involvement. The generic multicultural program, called "cross-cultural training", is insufficient to meet the needs of the front-line R.C.M.P. officer in Alberta. We are encouraged by the fact that the R.C.M.P. is currently making changes to training standards, and we are confident that an appropriate program will result. The current program at the Training Academy in Regina involves a two-day multicultural program taken by all recruits during their initial training program, which spans a total of six months. Although the program has a good Aboriginal component, the presentation is the same for all recruits throughout Canada, and the content is too general. Consequently, it does not address the diversity of Aboriginal cultural groups in Alberta.

The R.C.M.P. seems to be aware of this shortcoming in Aboriginal awareness training and has advised the Task Force that it is in the planning stages of providing more specific Aboriginal training to "K" Division field officers. The Task Force notes that this concern was also addressed in two recommendations in the Native Policing Study - "K" Division:

> *That mini cross-cultural indoctrination programs be developed at each Native policing unit in concert with local Native people to provide specific cultural awareness to all local detachment personnel, in particular new member arrivals to each unit and that the divisional Native policing section oversee and assist in this development.*
>
> *That "K" Division training branch develop a cross-cultural training program which addresses specific Native cultures in Alberta with particular emphasis on the practical application of cultural awareness to the community based model of policing.*[87]

A final observation about training at the Academy in Regina is that a number of recruits were perplexed about the need for Aboriginal awareness training. We found some resentment in relation to a real or perceived R.C.M.P. recruitment policy for Aboriginal applicants. The Task Force concludes that an introduction to Aboriginal awareness training should include an awareness of the extent of over-representation of Aboriginal people in conflict with the law as well as of the gravity and dimension of this social problem. Furthermore, Aboriginal awareness training and Aboriginal recruitment must be understood within this context.

The Task Force Recommends:

2.59 That all police services, when they deal with a significant number of local Aboriginals, establish a specific awareness program geared to sensitizing their members and staff to Aboriginal issues.

2.60 That Aboriginal people not be defined as a member group of the multicultural mosaic, but as members of society with First Nation status and Aboriginal status.

2.61 That Aboriginal people, during the course of Aboriginal awareness training, be identified as a group which requires remedial measures and assistance to be able to be represented on Alberta's police forces in proportion to their numbers in the respective communities.

2.62 That police officers be required to take Aboriginal awareness refresher training after experience in the field. This recommendation is made because training during induction may be viewed somewhat academically by recruits during their first exposure to the Aboriginal community.

2.63 That Aboriginal people be utilized to deliver Aboriginal awareness training.

2.64 That Aboriginal recruits and staff take awareness training as well as non-Aboriginal staff, so that a cross-cultural dimension can be added to group discussions.

2.65 That delivery of Aboriginal awareness training include a significant amount of group discussion, and not consist of lectures only. This is important since the content and substance of Aboriginal awareness training deals with learned and ingrained attitudes on the part of the participants. Differing views and reactions must be allowed to be worked through in the sensitization process.

2.66 That Aboriginal awareness programs and sessions include as a central theme that Aboriginal people have special rights and that the relationship between the Government of Canada and Aboriginal people as defined in Section 35 of the Constitution Act is the starting point for the contemporary nature of this relationship.

2.67 That the Solicitor General of Alberta provide leadership in establishing a co-operative Provincial Aboriginal Awareness program for non-R.C.M.P. provincial police officers, and that Aboriginals have input in the development of this program.

R.C.M.P.:

2.68 That the generic or central Aboriginal awareness training at the Training Academy be supplemented at the local and field level with a program to sensitize detachment staff to the particular cultures of the communities which they serve, and that this program include a visit to a local Indian or Metis community.

2.69 That the Aboriginal-specific component of multi-cultural training be enhanced both in quality and in time allocated. Given the size of the Aboriginal population as a client group of the R.C.M.P., the allocation of seven hours during a six-month program can probably be increased.

2.70 That the Aboriginal-specific component of multi-cultural training at the Training Academy distinguish more adequately between the Indian and Metis cultures of Canada. Leaders in the Indian and Metis communities should be consulted for this purpose.

2.71 That Aboriginal spirituality be included as part of the Aboriginal-specific training program at the Training Academy and that the Aboriginal community be consulted in the determination of appropriate learning materials.

2.72 That Aboriginals be engaged in the presentation of the Aboriginal-specific component of multi-cultural training.

2.73 That an extensive Aboriginal awareness program or exposure to the Aboriginal community be made mandatory for senior R.C.M.P. personnel and supervisors. This recommendation acknowledges that supervisors and managers require this exposure in order to provide the appropriate leadership to field staff.

2.74 That the civilian staff of the R.C.M.P. also receive Aboriginal awareness training.

Term of Reference:

Policing 2(d)

To review and assess the recruitment and selection programs of the R.C.M.P. and municipal police forces that are designed to attract Indian and Metis people into the respective police forces.

The Candian Human Rights Commission has stated that:

> *Questions of public trust and shared values apply just as much to other institutions as to the police. Until they can be said truly to represent and respond to the communities they serve, the suspicion that the guardians of the public trust are not fully trustworthy will continue to rankle. To be out of touch with substantial segments of one's public is to risk both incomprehension and unfairness.*[88]

The recruitment and selection programs of the R.C.M.P. and municipal forces as they apply to the recruitment of Aboriginal people become suspect when one views the results. The following Table helps to determine the proportion of Aboriginal staff on police forces in Alberta. The percentages in the Table are compared to the workload estimated by the respective forces on the basis of information on Aboriginals charged. We have been told by a Calgary police official that these figures are under-estimated because actual police contact with the Aboriginal community as a component of workload is higher than the figures based on "charges" data.

NUMBER OF NATIVE POLICE OFFICERS EMPLOYED BY POLICE FORCES IN ALBERTA

Police Force	Number of Police Officers	Number of Native Police[d] Officers	Native Police Officers as a % of all Officers	Workload (% Native)
Edmonton	1,101	11	1.0%	18.6%[e]
Calgary	1,254	13[a]	1.0%	8.4%[f]
Lethbridge	102	-	0	Unknown
Medicine Hat	71	2	2.8%	Minimal
Camrose	21	-	0	Minimal
Lacombe	11	-	0	Minimal
Taber	9	-	0	18.5%[g]
Coaldale	7	-	0	10.1%[h]
Redcliff	7	1	14.3%	Minimal
All Municipal	2,583	27	1.0%	-
R.C.M.P.	2,052[b]	50 - 55[c]	2.4 - 2.7%	32.7%[i]
All Police Total	4,635	77 - 82	1.7 - 18.%	20.9%

[a] Based on a December 1989 voluntary workforce survey. Data refer to permanent sworn and civilian police members and is based on a 86.3% departmental response rate. The 13 Native Police Officers represented 1.2% of the total Police officer respondent population.

[b] Includes Special Constable positions; excludes civilian members and public servants.

[c] Includes 35 Special Constable positions and an estimate of 15 - 20 other Police Officers with Aboriginal ancestry.

[d] Ethnic Status is self-reported.

[e] Persons charged estimates provided by Edmonton City Police.

[f] Persons charged data provided by Calgary City Police.

[g] Total crime figures provided by Taber Police Department.

[h] Persons charged data provided by Coaldale Police Department.

[i] Estimates from Task Force's Statistical Report.[89]

Note: If the 35 Special Constables (3(b)) are excluded from the R.C.M.P. establishment and the calculations, then the number of Native Police officers is 15 - 20 out of an establishment of 2,017, which is 0.74 - 1.0%

R.C.M.P. data obtained October 4, 1990.

Municipal Forces

The Table shows that, apart from the Taber and Coaldale municipal police, the Edmonton and Calgary police report the larger workloads. The Lethbridge Police reports its Aboriginal workload as unknown. However, it is believed to be considerable, in view of the large number of Aboriginal inhabitants of the city and the large surrounding Aboriginal communities which include the Blood and Peigan Reserves.

The comments of the Task Force will apply primarily to the Edmonton, Calgary, and Lethbridge forces as these have significant Aboriginal contact. However, the conclusions and recommendations should be taken as being applicable in general.

The Table clearly demonstrates that the 1% Aboriginal staffing of police officer positions is not a reflection of either the workload or the cultural make-up of the community. The Task Force was surprised to learn that the Lethbridge police force has not recruited Aboriginal police officers. This situation is all the more serious because of the significant Aboriginal population in the area.

Anecdotal information provided by police officials indicates that Aboriginal staff continue to be underrepresented in the higher ranks of the police.

R.C.M.P.

When the workload of the R.C.M.P. is examined in relation to Aboriginal members, it becomes clear that even the successes of the 3(B) Program are overshadowed by the need for more Aboriginal recruitment. While the Aboriginal workload estimate is approximately 33%, Aboriginal staffing levels are approximately 2.5%. This figure includes 3(B) Special Constables who are technically surplus to the complement. When the 3(B) program is excluded, the numbers drop to the same level as that of the municipal forces of Edmonton and Calgary.

Barriers to Recruitment

The Task Force had the opportunity to meet with Aboriginal as well as with police communities. It seems that there is no common understanding of the barriers to recruitment. The Aboriginal community, on the one hand, acknowledges that the career of police officer can carry with it a stigma in the Aboriginal community which deters Aboriginal involvement. On the other hand, we have heard Aboriginal people express frustration with the lack of outreach to the Aboriginal communities for recruiting purposes. The length of the application process has sometimes been stated as a factor. In a workshop at the "Sharing Common Ground" Conference, one police participant stated that the R.C.M.P. application process can take eight to twelve months. Eyesight requirements and physical fitness have been mentioned by Aboriginal people as standards which are difficult to meet. However, our discussion with the police did not confirm this perception.

It seems that criminal records are a barrier to recruitment. While one representative of a police force stated that the pardon criterion is used informally to assess acceptability in the review of criminal records, other contacts revealed an absence of solid criteria or policy. In fact, no criteria or policy were mentioned in the

Briefs by police forces. One Chief of a large municipal police force affirmed his belief that enough Aboriginal people without criminal records could be recruited.

Education was cited often by police forces as a barrier to Aboriginal recruitment. However, we heard a different view from the Lethbridge Native Friendship Society which painted a gloomier picture. The Society stated that educated Aboriginals are not achieving the success they deserve in applying for jobs in mainstream society. If this observation is true, it may suggest that the education ladder for Aboriginal people is not the ladder of success it is believed to be.

In any event, it is clear that the barriers to Aboriginal recruitment are not clearly defined or understood. What is clear is that the approach to Aboriginal recruitment should be Aboriginal-specific. To acknowledge the magnitude of the problem, dedicated resources and staff should be directed to Aboriginal recruitment. This effort should not be subsumed under minority or multi-cultural recruitment because it is evident that Aboriginal people have special status and encounter particular difficulties not shared with other multi-cultural minorities or ethnic groups.

New Developments

In response to the Report of theVisible Minority Task Force, the Calgary Police Service is currently conducting a "Review of the Recruit Selection Process. The existing process will be reviewed to ensure the testing and assessment instruments are fair, valid and appropriate."[90]

The Report of the Visible Minority Task Force noted that when an exceptional candidate is identified, a 'fast-tracking' of the process can occur to pre-empt job offers from other employers.[91] The process described, however, is multi-cultural rather than Aboriginal-specific.

In his Report to the Commissioner of the R.C.M.P., Assistant Commissioner R. Head recommended

> *That the force re-examine the application processes and change where necessary to ensure they are not culturally biased against Native persons.*[92]

Our Task Force endorses this recommendation as well as the recommendation *"that the force embark upon an affirmative action program specific to Aboriginal Canadians."*[93]

When we discussed affirmative action with Calgary Police officials, they stated that they would be in favour of a program to bring Aboriginal people to a competitive level separate from the normal recruitment process. In other words, the lowering of recruitment standards for Aboriginal people is not viewed as desirable. Preparation for entrance to a "level playing field" was also implied by the Edmonton City Police Service which has announced a Targeted Remedial Training program.[94] The Edmonton City Police stated about this program:

> *We queried the Department of the Solicitor General and the Secretary of State about the feasibility of a formal remedial training for the members of visible minorities whose education does not meet our application requirements. The proposed training should increase the number of Natives and Metis constables by:*
>
> a. *raising their education to satisfy the application requirements;*
>
> b. *providing appropriate life skills;*

c. *providing insight into policing, and*

d. *providing career related training.*[95]

The Task Force considers this program a positive effort.

The R.C.M.P. Native Special Constable Program to which we referred earlier is an example of an Aboriginal recruitment program that has achieved some measure of success. Currently, 35 Native Special Constables serve in the R.C.M.P. in Alberta. The Task Force suggests that this program be examined to identify the factors contributing to success so that these can be used in the recruitment of Aboriginals.

The Task Force believes that peer support is a necessary condition for successful Aboriginal recruitment and that "cluster hiring" can be an important factor. It is also important that Aboriginal people hold senior influential positions in police organizations to provide an even greater network of support. This support is necessary to overcome the stigma mentioned earlier and to counter the effects of occupational isolation.

The process of including Aboriginals in Criminal Justice agencies is long overdue. It is one of many ways in which Aboriginal people can participate more in the affairs of Criminal Justice and in society in general.

The R.C.M.P. and the Edmonton and Calgary Police Services are issuing statements of intent and making concrete plans to increase the numbers of Aboriginals in their ranks. While it is difficult to quantify results in Aboriginal awareness training, success in recruitment and staffing efforts can be measured easily by tracking the presence, or lack, of Aboriginal police officers. While the Lethbridge City Police did not articulate any new recruitment objectives or initiatives, any development in this area would be welcomed by the local Aboriginal community.

The Task Force Recommends:

2.75 That all Alberta police services, including the R.C.M.P., streamline and shorten the recruitment process for Aboriginal applicants.

2.76 That the police services of Alberta, including the R.C.M.P., commit themselves to an affirmative action plan designed to increase significantly the level of Aboriginal recruitment. The pre-employment up-grading program under consideration by the Edmonton City Police Service is a positive affirmative action response to the recruitment problem. The Head Report suggests that a similar approach is under consideration by the R.C.M.P. The Task Force commends these initiatives.

2.77 That affirmative action programs allow Aboriginal applicants to be up-graded to meet realistic uniform standards for all police officers at the recruitment level. This would ensure that Aboriginal and non-Aboriginal officers, once recruited, would be on a level playing field with police officers.

2.78 That police forces express commitment and adopt a long-term plan for Aboriginal recruitment and that they begin immediately to

educate young people in the communities about the positive aspects of policing and policing careers so that, in future, potential Aboriginal recruits will not have a negative and reactive view of policing. The newly implemented Calgary Police Service outreach program is commended as a positive example of such an approach.

2.79 That police forces dedicate staff and resources to their efforts to recruit Aboriginals. This process must be Aboriginal-specific and tailored to Aboriginal culture and the needs of police as well as of Aboriginal communities.

2.80 That recruiters be Aboriginal recruitment specialists who have considerable knowledge of Aboriginal culture and that these recruiters be Aboriginal themselves.

2.81 That recruitment goals for Aboriginal police be set ideally to reach levels of recruitment which correspond to the proportion of Aboriginal people in the community.

2.82 That the Task Force adopt recommendation No. 52 of the Head Report, which reads as follows: *"That the Force re-examine the application processes and change where necessary to ensure they are not culturally biased against Native persons."*[97]

2.83 That all municipal police forces in Alberta review their application process and criteria for the purpose of eliminating cultural bias, and identify other recruitment barriers such as physical fitness, eyesight requirements, and education.

2.84 That police forces apply cluster hiring as a recruitment strategy.

2.85 That police forces retain the services of one or more Indian or Metis Elders as a method of providing support to Aboriginal police officers.

2.86 That Aboriginals with criminal records not be excluded necessarily from the recruitment process and that the respective police forces and R.C.M.P. articulate policy with respect to the recruitment of Aboriginals with criminal records.

2.87 That the R.C.M.P. Native Special Constable Program be examined by Alberta police recruiters to determine the factors contributing to success so that these factors can be applied in recruitment processes and programs.

Term of Reference:

Policing 2(e)

To review operational policies and practices of the R.C.M.P. and municipal police forces as they relate to the exercise of police powers as between Indian and Metis people and non-Indian and non-Metis people to determine if there are differences in treatment and whether those differences are desirable or detrimental.

Systemic Discrimination

In their Briefs, policing services in Alberta generally expressed the same response: we do not treat or police people differently on the basis of race, or: race is not a factor in policing functions. On the surface, this may seem satisfactory. However, it does not address systemic discrimination. Systemic discrimination involves the concept that the application of uniform standards, common rules, and treatment of people who are not the same constitutes a form of discrimination. It means that in treating unlike people alike, adverse consequences, hardship, or injustice may result. To help illustrate the concept of systemic discrimination in the area of policing, we will draw on examples from some of the communities we visited.

In a remote Aboriginal community serviced by a police detachment centrally located in a nearby municipality or township, an arrest and detention may cause greater hardship on the Aboriginal person than other similar arrests and detentions in the detachment area. The community of Peerless Lake is eighty kilometres from the nearest R.C.M.P. detachment which is located in Red Earth Creek. If an Aboriginal person from Peerless Lake is arrested and brought in, and exactly the same procedures and criteria are used as those applied to a resident in Red Earth Creek, the impact on the Peerless Lake resident will be unjust or unduly harsh. This is especially so because, regardless of race, arrested persons are released outside the detachment doors. For non-Aboriginals from Red Earth Creek, the procedure is not as harsh as it is for Aboriginals from Peerless Lake, who must make their way back to their community on their own, eighty kilometres away on a road that is at times impossible to travel.

In an urban setting, systemic discrimination also emerges in policing situations. In one meeting, we were told the story of an Aboriginal man who was caught shoplifting a small item in Edmonton, and who was released with an appearance notice. He returned to his community near Slave Lake. Not understanding the nature of the proceedings, and unable to afford to return to Edmonton, he failed to appear in court. A warrant was then issued, and the man was arrested and held in the Edmonton Remand Centre on the grounds of failing to appear in court. The man, we were told, spent over a month in remand awaiting trial.

It is clear that operational policies applied uniformly to Aboriginal people sometimes have unjust or unduly harsh results. The reasons may be geographical, economic, or cultural. However, it must be acknowledged that the application of uniform policies can have a discriminatory effect. This matter must be addressed by scrutinizing closely the manner in which policing currently takes place.

The Task Force Recommends:

2.88 That policing organizations together with Aboriginal organizations and communities enter into on-going discussions to examine policies and practices used by policing services which, by their nature or application, have a disproportionately harsh or inequitable impact on Aboriginal people.

2.89 That police services, in addition to the usual factors, take into consideration the residence of an Aboriginal person when determining the option of release with a Notice to Appear or arrest, to ensure that undue hardship does not result.

2.90 That when Aboriginal persons are arrested, removed from a community and transported to another community, and then are released from custody, the police agency assume the responsibility for making arrangements for their return to the community in which they were arrested.

The impact of some programs on a disproportionate number of Aboriginal people is a problem. One example is Operation SHOCAP. SHOCAP stands for Serious Habitual Offenders Comprehensive Action Program. This program identifies young offenders who have the greatest likelihood of re-offending and allows for policing them more intensively. SHOCAP's premise is that only a small proportion of young offenders are responsible for the largest proportion of crimes committed by young offenders. SHOCAP is a means of identifying these individuals and of applying more police resources for the purpose of reducing crime in the community. Individuals are identified by their criminal records. Their offences are mostly property-related.

SHOCAP operates in Edmonton and Calgary. The Calgary police stated that currently, 3.9% of the identified habitual young offenders are Aboriginals. The Edmonton police stated that approximately 50% are Aboriginals.

The SHOCAP program is based on a cross-jurisdictional or multi-agency approach to finding solutions and alternatives for young offenders. To date, the SHOCAP program has not developed beyond a reactive policing exercise, as stated by the Calgary Police Services in a meeting with the Task Force. Some concerns were expressed about the program. For example, the John Howard Society of Alberta said that SHOCAP was presently only being used as an intelligence gathering vehicle, and the Boyle Street Co-op in Edmonton said the program amounted to harassment of young people.

Although the multi-agency approach has not yet fully developed, it is a useful approach. The youth are not only coming into contact with the police, but they are also likely to be involved with many other agencies such as social services, school authorities, probation branches, public housing, and Canada Employment. An agency working in isolation cannot hope for success in terms of behaviour modification. An integrated response is necessary to identify and assist these young people. However, when they are Aboriginal, the resources of their communities should also be involved. An example of such a resource is the Metis Children's Services Society.

SHOCAP is an example of a police initiative that has a disproportionate impact on Aboriginal children. Other programs could have the same potential. Any program, operation or initiative that has significant contact with Aboriginal people should have input from Aboriginal people and organizations.

The Task Force Recommends:

2.91 That police organizations, the Indian Association of Alberta, and the Metis Association of Alberta examine programs and initiatives of police agencies that have a significant impact on Aboriginal people so that viable solutions and alternatives can be developed.

Differential Policing

In Briefs and presentations, Aboriginal people have expressed concern about differential practices by the police in the treatment of Aboriginal and non-Aboriginal people. For example:

> *Sometimes there is selective charging by Police outside the Tavern. At closing time the Police will only stop cars driven by Aboriginal people.*[97]

> *Often, non-Native merchants and other people who associate with the R.C.M.P. are not arrested for laws they break.*[98]

> *It is well known in places such as High Level, Peace River and Valleyview, that if you are a Native walking home you will be picked up by the R.C.M.P., thrown in gaol and at times charged for several offences. Whereas, if you are White and walking home, you will not be charged by the R.C.M.P. In some cases, these White people will be offered a ride home.*[99]

> *Approximately three-quarters (72%) of the respondents feel that Natives receive different treatment than non-Natives when they come into contact with the Police. More than half (51%) do not feel that Police in the city or area in which they live treat Natives well, and over one-third (35%) feel that even Police on their home Reserve do not treat their people well. While 62% do express respect for the Police, only 29% feel that the Police respect Natives.*[100]

> *R.C.M.P. appear to treat Native people different than non-Native people when picking them up in the Town of High Level. The methods used to perform this task, should sometimes be questioned. Many times it is simply a display of force to show the taxpayers that the R.C.M.P. are active and earning their wages.*[101]

> *Settlement members are often stopped in their vehicles ... for reasons other than to be asked if they have alcohol in the vehicle or if they have been drinking ... This type of consistent treatment indicates a bias against the Native people and the application of Police Officer's authority to make routine checks.*[102]

> *On the whole, Indian people seem to believe that non-Indian Police are more likely to stop vehicles driven/occupied by Indians and charge in cases where discretion may be used and they are often treated with discourtesy in their dealings with the Police. They are greatly concerned that these attitudes displayed are based on racial prejudice.*[103]

The reasons for these perceptions and concerns must be examined. An article by Tim Quigley, presented at the Western Judicial Workshop in 1990 and entitled "Introducing Cross-Cultural Awareness," explains that:

> *The commonly held view is that there is more criminality among Native people than among non-Natives. But is that true? Studies in the United States suggest that there is not*

> *significantly more criminality among Blacks and Hispanics than among Whites. The apparent differences are more explainable by Police conduct than by anything else ... Police use race as an indicator for patrols, arrests, detentions, etc.*
>
> *While we lack comparable data in Canada, there are some strong indicators that the same results obtain here. For instance, Police in cities tend to patrol bars where Native people congregate, rather than private clubs frequented by businessmen. Remote Native communities, by comparison with largely White communities, tend to have more policing.*
>
> *Does this indicate that Police are invariably racist? Not necessarily, since there is some empirical basis for the Police view that proportionately, more Native people are involved in criminality. It is just that the Police view then becomes a self-fulfilling prophecy ... They tend to police areas frequented by groups they believe are involved in criminality.*[104]

As an illustration of how race can be a cause of differential treatment, Quigley poses the question: *"Have you ever noticed that police rarely arrest whites for being intoxicated in public?"* Frequent charges are brought against Aboriginal people for public intoxication. However:

> *The charges might never have resulted had Police not used race as an indicator for criminality. The response may be that the Native person in question was intoxicated and that that is against the law. True. But not everyone breaking the law attracts Police attention or is charged.*[105]

The Task Force also heard concerns about the attitude of Police officers toward Aboriginal people. Some of the comments were:

> *Many rural R.C.M.P. have an authoritative attitude, coupled with a mind of righteousness, which develops toward inhumane police practices in dealing with Metis people.*[106]
>
> *Police attitudes tend to be biased, intolerant, insensitive and prejudiced when dealing with Metis people.*[107]
>
> *White R.C.M.P. officers appear insensitive, aggressive, and at times appear to abuse their authority and control.*[108]
>
> *I lied to the R.C.M.P. to get respect from them. I lied and told them I was Italian. They believed me and totally changed their antagonistic attitude.*[109]
>
> *A large number of participants expressed concern about the racist and arrogant attitude displayed by some City Police officers; City Police attitude stinks!* [110]
>
> *For their part, the Police would perceive there is no problem ... sure they are not racist, but there is sure a difference who gets scooped and who doesn't.*[111]

The 1989 Head Report entitled "Policing for Aboriginal Canadians: The R.C.M.P. Role," addressed the attitudes of R.C.M.P. members toward Aboriginal people. The Report concluded that:

> *The bottom line is that we have some very tolerant and understanding members working among Natives and some who are very intolerant.*[112]

A number of possible solutions have been proposed to the Task Force for dealing with the issue of negative police attitudes toward Aboriginal people:

A. Intensive cross-cultural training, during initial recruit training and regularly thereafter, for all police services and their staff. This training could range from general matters to community-specific cross-cultural training at local police levels. It is generally believed that Aboriginal people should deliver or be significantly involved in all cross-cultural training endeavours.

B. Allowing the Aboriginal community to participate in the selection process of officers who will police them.

C. Increased care in staffing by, for example, pre-screening interviews or administering attitudinal tests to screen out police personnel who would be inappropriate for Aboriginal policing duties.

D. Increased non-enforcement and social contact by police personnel with the Aboriginal community.

E. Increased recruitment of Aboriginal people to policing services as police personnel and staff.

F. Significant disciplinary measures for police personnel who exhibit intolerant policing practices. Intolerant behaviour should not be rewarded by transfers to better or more desirable policing duties or postings.

G. The need for the education system to teach school children about Aboriginal history, rights and culture to avoid the development of racial intolerance.

H. Mandatory intensified or corrective cross-cultural training for police personnel who exhibit intolerant attitudes.

I. Policy requiring police personnel who have Aboriginal policing duties to read specific literature about the community they police.

J. Only posting certain personnel to Aboriginal communities; for example, personnel with an interest in the outdoors; older, more seasoned officers; outgoing, helpful, compassionate people; and people who grew up in a rural area.

K. Involve the Native policing unit of the police organization in service audits to determine the quality of service provided to the Aboriginal community and to detect any problems at an early stage.

L. Have Aboriginal people police Aboriginal people.

Any measures taken by police organizations in Alberta to combat intolerance exhibited by members or personnel can only help to improve the relationship of police services in general with the Aboriginal communities in Alberta. The Head Report states that:

> *Over the years there have been numerous examples of members in the force displaying racist attitudes toward Native people. How often have we seen one member with such an attitude destroy years of co-operative building by many solid, concerned and understanding members. Building takes time and patience, but destruction is quick and very painful to those members who follow and are called upon to deliver the service to the Aboriginal clients who are sworn to serve and protect.*[113]

Initiatives by Aboriginal people, locally, regionally, or provincially, will aid in developing more culturally-sensitive policing. It is crucial that Aboriginal communities become involved in the policing of their community and not be passive recipients of a service. If there is a problem that cannot be resolved, Aboriginal people must make use of the complaints process.

The Task Force has heard that police contact with Aboriginal people in some communities is very high or can even constitute the bulk of their workload. As a result of continued negative contact with Aboriginal people, some police officers experience burnout, and may develop biased views of Aboriginal people in general. This situation is a result of forces beyond the control of the police. However, a consistently disproportionate Aboriginal workload should indicate a need for more services or resources to be allocated in a community to combat a problem that eventually leads to involvement or contact with the Criminal Justice system. To determine priorities and to facilitate remedial programming, comprehensive statistics must be maintained by police organizations on Aboriginal workload and charging. If the workload indicates a significant contact with Aboriginal people, the police organization should monitor the development of negative attitudes and , if appropriate, take remedial measures. The maintaining of Aboriginal-specific police statistics will also help to justify increased funding to helping agencies, which, in turn, will aid the function of the police.

The Task Force Recommends:

2.92 That Canada and Alberta, and Aboriginals, develop educational materials about Indian and Metis people to educate the public about Aboriginal issues, history, rights, and culture.

2.93 That the Indian and Metis organizations of Alberta and Alberta Aboriginal communities become involved in the issue of differential policing for the purpose of identifying and reporting it.

2.94 That all police organizations in Alberta maintain statistics which would allow for the identification of Aboriginal workload or contact.

Diversion

Diversion is any action or measure used by police to avoid or limit the involvement of an accused person with the Criminal Justice process. Diversion can be achieved informally by releasing someone with a warning or formally by, for example, using the Alternative Measures Program for a young person. It has been suggested to us that police officers no longer have the discretion they used to have. However, of all the actors in the system, police still maintain the most significant discretionary power in terms of whether or not to lay a charge.

A number of factors account for, or are perceived as accounting for, the erosion of police discretion:

A. that as society has grown more impersonal and legalistic, discretion is eroded;

B. Police officers express concern that if they do not use a police response, that is, to lay a charge, they may be held personally liable.

C. Police are less willing to take a chance with someone they do not know, or to whom they cannot relate;

D. Under current police staffing policies, a police officer is posted to a community and removed again later. The officer may never have an opportunity to become a long-term member of the community who has a vested interest in changing conditions.

E. With the decrease in government spending for services, and the centralization of services, fewer resources are now available in the communities for alternative actions by the police;

F. Cultural barriers or a lack of understanding between police and Aboriginal people often result in a police response rather than a diversion;

G. Police training focuses on developing reactive policing skills and does not train adequately for diversionary responses.

H. A police officer's performance appraisal is based on reactive police statistics; that is, the officer's ability to detect crime and the number of arrests made by the officer.

The Task Force received statistics about young offenders that indicate that even where an opportunity exists, police are not diverting Aboriginal young offenders to the Alternative Measures Program. These statistics show that 93% of individuals accepted in the Alternative Measures Program are non-Aboriginal. The police is one of the agencies involved in the decision to divert to Alternative Measures. Although the police are only partially involved in the decision to divert to Alternative Measures, diversion of Indian and Metis youth is not taking place in proportion to their numbers in the criminal justice system.

To ensure maximum opportunity for the exercising of police discretion, Aboriginal communities must become involved actively in policing and criminal matters which affects their communities. For example, the predominantly Aboriginal community of Fort Chipewyan is in the process of forming a community justice committee with representatives from the two Indian Bands - Cree and Chipewyan, the Metis, the police, Native Justices of the Peace, and others. This committee seeks solutions to youth crime, and wishes to become active in policing issues and sentence disposition. The Task Force enjoyed meeting a community group so determined to seek, co-operatively, relevant and workable solutions to the prevention of crime in their community.

The Task Force Recommends:

2.95 That Aboriginal communities, police agencies and service providers at the local level enter into discussions to determine formal and informal resources and programs in the community, for the purposes of diversion and co-ordination to address the issue of Aboriginal people in conflict with the law.

Multiple Charges

Aboriginal people expressed concern with the police practice of laying multiple charges:

> *Many times a number of charges are laid because one main charge can have many associated charges. This system gives way to lawyers plea-bargaining for their clients. Of course, it also means that the person will be found guilty of something. Misinformation abounds from Police/lawyers about multiple charges and plea bargaining. How do you fight this system?*[114]

> *Police officers have a practice of laying multiple charges, which is condoned by the Judiciary.*[115]

> *Many Police officers express concerns that sentences are too lenient, especially with the*

> *young offenders. The Police spend many man-hours investigating an offence to bring these cases to Court only to see the accused given a light disposition. It is Native Counselling Services of Alberta's belief that to compensate for these alleged inadequacies, the investigating officer will often file multiple charges for one offence thereby ensuring a custody disposition.*[116]

The Task Force has been told that Aboriginal people often plead guilty to get the matter "over with", or to get out of remand, which is considered to be "dead time." The practice of laying multiple charges out of a single fact situation also facilitates the plea bargaining process. This poses a problem in that there is an inherent danger that an injustice could result when multiple charges are laid. The practice of laying multiple charges must be addressed by the police, and must be discouraged.

Another problem that may result in laying multiple charges or over-charging emerges when police personnel are unsure of the appropriate charge or are unable to determine which charge is appropriate. Police officers should be required to seek advice to determine if their charging is acceptable.

The Task Force Recommends:

2.96 That police services ensure that multiple charges resulting from a one fact situation is discouraged or eliminated.

2.97 That, where police have doubts or are unsure about the appropriate charge to lay, they seek advice with respect to the appropriate charge. Advice may be sought from, for example, a senior officer, prosecutor or lawyer before the charge is laid.

Complaints

Complaints were mentioned in Briefs and in meetings held in communities and Correctional Institutions. There were two major areas:

A. Complaints about the conduct of police officers, and

B. Complaints about the performance of police officers or service provided.

We have been told that "Native people do not complain." Whatever the reason for this lack of assertion, be it cultural or learned, it must be noted and remedial action must be taken. The complaints of sexual and physical abuse, racial comments, and improper investigations are heard so frequently that it would be an injustice to fail to address the matter. The Edmonton Police Service stated in their Brief:

> *The quality of the relationship between Natives, Metis and the Edmonton Police Service, is reflected in the low number of complaints that have been lodged by the members of this ethno-cultural group in which allegations of general misconduct or racial discrimination were levied against our Members."*[117]

This statement may be a "false-positive". It assumes that because no complaints are lodged, there are no problems. Yet, the Task Force has heard from and about Aboriginal people who recount tales which justify complaining. However, no complaint has ever been pursued or even made.

Several main themes emerge when Aboriginal people are asked why they did not pursue a complaint:

A. Lack of knowledge about the complaints process against police officers;

B. Lack of knowledge about individual rights;

C. Lack of confidence in the complaint system and questioning whether the complaint will result in appropriate action, or any action at all;

D. Fear of retaliation by the police service against the complainant is made, and;

E. A cultural trait that assumes that people in authority should not be questioned and are above reproach.

Several of these barriers can be addressed by providing information to Aboriginal people. Some of the problems can be mitigated by education about complaint processes relevant to the R.C.M.P. and municipal police forces.

However, several major problems remain with respect to current complaint mechanisms. The first concerns the process of filing a complaint against a police officer. The usual manner of lodging a complaint is for the complainant to walk into the local police station and to file a complaint at the front desk. This brings into play several of the barriers described previously. To deal with the fear of retaliation at the entrance phase of the complaint, a body outside the policing service should have authority to accept complaints and to advance them through existing complaints process on behalf of the Aboriginal person. The Blood Tribe stated:

> *Indian communities should have a bona fide independent body through which they can voice complaints with regard to policing services they receive.*[118]

The Task Force agrees, the office of the Aboriginal Advocate should be established within the Aboriginal Justice Commission that is recommended in the section of the Report entitled "Ongoing Process." The office of the Aboriginal Advocate should be established to accept and monitor complaints from the entire criminal justice system, however, in this section of the Report we will deal specifically with policing matters.

To ensure that the Aboriginal Advocate is accessible to Aboriginal people throughout the province, the Aboriginal Advocate should have a toll-free telephone line so that complaints can be brought forward easily. An external Aboriginal Advocate will help to mitigate a possible screening process of potentially legitimate complaints at the detachment or station counter. An experience such as the following should not occur:

> *I made a police complaint about the R.C.M.P. in Bonnyville, but it was totally ignored.*[119]

The Aboriginal Advocate can act in a support capacity during the complaint process, and can serve as a mechanism for providing information about the outcome of a complaint to the complainant. The Advocate can also act as a source of information about appeal procedures.

The current complaint process uses police to investigate other police officers. This raises the old issue of who polices the police. The Metis Association of Alberta told of comments by Metis people as follows:

> *It was felt that the Police Department has developed an incestuous relationship among the officers which leads to internal cover-ups. How can the Police Force admit to errors when they may be breaking the law themselves? Police*

> *protect Police first - before they will protect the legitimate interests of the Native person. We need to challenge the system when it is unfair.*[120]

Native Counselling Services of Alberta commented:

> *Another common belief is, that when a complaint is filed, the Police will send out their own investigator, and the whole matter will be 'swept under the rug'.*[121]

Unfortunately, there are few people besides the police who are trained in investigative work. Therefore alternate choices are limited. However, external parties should be involved. Native Counselling Services of Alberta proposed in its Brief that:

> *A Native person be designated to assist in the investigation of complaints ... against Police officers.*[122]

The Metis Association of Alberta made a similar statement:

> *Because of concern of policing accountability to Metis/Indian people or public at large, internal complaints and investigations should be investigated by an external firm.*[123]

The Task Force agrees with this proposal but would alter the level of involvement. We believe that Aboriginal people should become involved in the review stage of the investigation, the point at which the determination is made to go forward.

The Metis Association of Alberta and the Indian Association of Alberta should become involved in discussions with the various police services in Alberta in order to establish a mechanism for such a process.

The Aboriginal Advocate should be involved with the monitoring of police complaints in general, as they arise from all components of the criminal justice system. This would allow for a central data bank for police complaints and allow for more effective monitoring. Criminal Justice personnel could pass on concerns of inmates or accused persons to the Aboriginal Advocate at any stage in the process. To achieve this, police agencies should forward annually all complaints to the Aboriginal Advocate, including any action taken on the complaint.

The current appeal boards and other bodies for the handling of police complaints, provincial as well as federal, should have Aboriginal representation. In our Report, we have stressed continuously that Aboriginal people must be represented equitably in all components of the Criminal Justice system. We advocate increased Aboriginal involvement in the system to facilitate the development of Aboriginal confidence in the process.

The Task Force Recommends:

2.98 That Aboriginal communities be provided with education and information about proper police conduct, individual rights, including the right to lodge a complaint, and about the mechanisms for lodging complaints.

2.99 That a position of Aboriginal Advocate be established within the Aboriginal Justice Commission, independent from the police and that this position have a mandate to accept and advance police complaints on behalf of Aboriginal people.

2.100 That all complaints against police lodged by Aboriginal people and received by an R.C.M.P. detachment or police service be forwarded annually to the Aboriginal Advocate.

2.101 That the policing services of Alberta, the Indian Association of Alberta, and the Metis Association of Alberta enter into discussions to identify Aboriginal people who will assist in the review of police complaint investigations.

2.102 That the results of any investigations resulting from a complaint advanced by the Aboriginal Advocate be forwarded to the Aboriginal Advocate, so that the results can be given to the complainant. Accompanying this feedback to the complainant should be explanations regarding appeals processes should the complainant want to proceed further.

2.103 That all Criminal Justice personnel be provided with information about the role of the Aboriginal Advocate. In addition, a policy should be developed to ensure that, if information surfaces about police impropriety, Criminal Justice personnel forward their concerns to the Advocate's office.

2.104 That the Aboriginal Advocate's office be given a toll free line for the lodging of complaints to ensure that the office is accessible from anywhere in the province.

2.105 That police complaint appeal bodies include Aboriginal representation.

Questioning of Aboriginal Accused Persons and the Availability of Translators

> *Despite ... general safeguards ... Aboriginal people, particularly those in remote communities and those whose primary language is not English, appear to have special problems in exercising their right to remain silent and to refrain from incriminating themselves. Their statements appear to be particularly open to being misunderstood both by police interrogators and when read out in Court. Their vulnerability arises from the legal system's inability to break down barriers to effective communication between Aboriginal people and legal personnel, differences in language, etiquette, concepts of time and distance and so on.*[124]

The issue of statement taking by the police is not a new one. In the "Native Peoples and Justice" report (1975), it was recommended that when an Aboriginal person is detained, an Aboriginal police officer or Aboriginal organization be called in. This recommendation was probably difficult to implement. It would still be today since there is currently only about 1% Aboriginal representation on all police services in Alberta.

Native Counselling Services of Alberta stated:

> *N.C.S.A. courtworkers have found that the Native accused have little understanding of their rights prior to or during the arrest process. Many of the accused unwittingly violate or waive their rights during the investigative stage and assist Police when not compelled to do so. Since the majority of offences occur under the influence of alcohol, the accused may not fully comprehend what is taking place during the interrogation. As most Native people cannot*

> *afford a lawyer prior to receiving Legal Aid, they are left without any type of legal support.*[125]

While it is true that most of the offences involving Aboriginal people are committed under the influence of alcohol or drugs, the rules of evidence provide that statements taken under these circumstances are inadmissible. Nevertheless, Aboriginal people remain under the impression that the taking of statements and interrogation of people under the influence of alcohol is an allowable practice.

The Task Force has heard many concerns from Aboriginal people on the issue of statement-taking. Some alternatives for dealing with statements taken by the police are proposed by Edward L. Greenspan and Edward Ratushny:

> *There is, in my opinion, a simpler, safer, and more radical way to ensure the integrity of evidence in Court. This, too, has been recommended by a number of authorities. It is to exclude as evidence everything a suspect tells the police - everything - unless he tells it to them in the presence of his lawyer.*
>
> *Some authorities, such as Professor Edward Ratushny, have gone even further. They have made good arguments for excluding all utterances made to the police by an accused person, whether his lawyer is present or not.*[126]

Another approach was established in Australia in 1976 in a case called R. v. Anunga and Others.[127] The Anunga Rule provides:

1. *When an Aboriginal person is being interrogated as a suspect, unless he is as fluent in English as the average white man of English descent, an interpreter able to interpret in and from the Aboriginal person's language should be present, and his assistance should be utilized whenever necessary to ensure complete and mutual understanding.*

2. *When an Aboriginal is being interrogated it is desirable where practicable that a "prisoner's friend" (who may also be the interpreter) be present. The "prisoner's friend" should be someone in whom the Aboriginal has apparent confidence. He may be a mission or settlement superintendent, or a member of the staff of one of these institutions who knows and is known by the Aboriginal. He may be a station owner, manager or overseer or an officer from the Department of Aboriginal Affairs. Combinations of persons in situations are variable and the categories of persons I have mentioned are not exclusive. The important thing is that the "prisoner's friend" be someone in whom the Aboriginal has confidence, by whom he will feel supported.*

3. *Great care should be taken in administering the caution when it is appropriate to do so. It is simply not adequate to administer it in the usual terms ... Police officers, having explained the caution in simple terms, should ask the Aboriginal to tell them what is meant by the caution, phrase by phrase, and should not proceed with the interrogation until it is clear the Aboriginal has apparent understanding of his right to remain silent. Most experienced police officers in the territory already do this. The problem of the caution is a difficult one but the presence of a "prisoner's friend" or interpreter and adequate and simple questioning about the caution should go a long way towards solving it.*

4. *Great care should be taken on formulating questions so that so far as possible the answer which is wanted or expected is not suggested in any way. Anything in the nature of cross-examination should be scrupulously avoided as answers to it have no probating (sic) value. It should be born in mind that it is not only the wording of the question which may suggest the answer but also the manner and tone of voice which are used.*

> 5. *Even when an apparently frank and free confession has been obtained relating to the commission of an offence, police should continue to investigate the matter and endeavour to obtain proof of the commission of the offence from other sources...*
>
> 6. *Because Aboriginal people are often nervous and ill at ease at the presence of white authority figures like policemen, it is particularly important that they be offered a meal, if they are being interviewed in the police station, or in the company of police or in custody when a meal time arrives. They should also be offered tea or coffee if the facilities exist for preparation of it. They should always be offered a drink of water. They should be asked if they wish to use the lavatory, if they are in the company of police or are under arrest.*
>
> 7. *It is particularly important that Aboriginal and other people are not interrogated when they are disabled by illness, drunkenness or tiredness. Admissions so gained will probably be rejected by a court. Interrogation should not continue for an unreasonably long time.*
>
> 8. *Should an Aboriginal seek legal assistance, reasonable steps should be taken to obtain such assistance. If an Aboriginal states he does not wish to answer further questions or any questions the interrogation should not continue.*
>
> 9. *When it is necessary to remove clothing for forensic examination or for the purposes of medical examination, steps must be taken forthwith to supply substitute clothing.*

The Anunga Rules are now applied almost universally in Australia and have been included in Australian police training manuals.[128]

The judiciary is sensitive to the issue of admission of confessions. However, greater understanding of Aboriginal culture is required. For example:

A. A standard caution administered to an Aboriginal person may have little or no meaning.

B. Some Aboriginal people are deferential to people in authority and may, therefore, answer any questions posed to them by police officers.

C. Aboriginal people will, at times, respond by giving an answer they believe the police officer wishes to hear.

D. Although Aboriginal persons may appear to understand and speak English well, they may not understand the concepts used or they may translate them into unequivalent Aboriginal concepts.

E. Non-Aboriginal concepts of time, space, and distance may not be the same as the concepts held by an Aboriginal person.

F. When an Aboriginal person is questioned about an event, all facts may not be brought out, especially if telling the whole story requires that the Aboriginal person criticize directly someone present, or if telling the story would result in overt expressions of emotion.

The above generalizations are given as examples to show that culture influences world view and interpersonal relations. These few examples, provided by Aboriginal people, illustrate that statements obtained by police from Aboriginal accused persons should be viewed with extreme caution.

The Task Force Recommends:

2.106 That the Anunga Rules be endorsed and adopted.

2.107 That police agencies review agency policies on the taking of statements to ensure that they reflect the Anunga Rules; and that where this is not the case, steps be taken to incorporate these Rules in a culturally sensitive way.

Police Service on Reserves and Settlements - Today and Tomorrow

As a result of dissatisfaction with existing and historical relationships with policing authorities and with the quality and type of service received, on-reserve Indian communities are increasingly demanding control over policing services on reserves. Consequently, Indians on reserves often include the administration of justice as a component of proposals for self-government.

It is clear that a diverse range of national and provincial policing arrangements and different funding formulae exist for on-reserve policing. This range of policing includes Band Constables, Special Native Constables, provincially appointed police officers, the R.C.M.P., and autonomous Indian police forces appointed under the Provincial Police Act with full policing powers.

A recent national survey showed that "crime rates for on-reserve Indians are significantly higher than for off-reserve Indians and the overall National crime rate; the average number of on-reserve crimes per 1,000 is approximately four times the national average".[128] Note that this quotation refers to the crime rate and not actual numbers.

We also note that the rate of the on-reserve population has grown by 3% per year over the past decade. In comparison, the national growth rate is 1%.[129] The influx of Bill C-31 Indians to reserves only serves to add to this pressure.

As a consequence of these factors, more program and policing services will be demanded by the on-reserve population in the future. The respective government jurisdictions must be prepared to deal with this development from a program as well as a funding perspective.

Differences between the cultural and spiritual values of Aboriginal and non-Aboriginal societies have been acknowledged as contributing factors to the disproportionate representation of Aboriginal people in the Criminal Justice system. This has led to a clear and strong demand for culturally sensitive policing on Indian Reserves and Metis Settlements.

Policing on reserves in Alberta is undergoing considerable change with respect to the delivery system and its funding base. A good example is the Louis Bull Band which in May 1987 established the first fully empowered Aboriginal Police Service in Alberta. The Band had traditionally been policed by the R.C.M.P., but believed that they would be better served by a police service tailored to meet their unique needs. They wanted a 24-hour police service with an emphasis on the ability to respond in keeping with cultural values and family relationships, and on the provision of local contact and crime prevention initiatives to combat an anti-police feeling among young people. This police service has operated for more than three years and appears to be effective.

The Blood Band in Alberta is in the process of establishing a police service with full policing powers. This project is a new initiative undertaken by the Blood Band with the co-operation of the provincial department of the Solicitor General, the Department of Indian Affairs and Northern Development, and the R.C.M.P. The plan calls for a period of graduated delegation of selected responsibilities. The R.C.M.P. will retain policing responsibility on the Reserve and oversee the performance of the Blood Tribe Police Service during this developmental phase.

The Task Force acknowledges the success of the Louis Bull Police Force and encourages the development of the Blood Tribe policing initiative. The Task Force also applauds the co-operation and assistance given to the Blood Band by the R.C.M.P., the Department of Indian Affairs and Northern Development, and the provincial Solicitor General's Department.

Another initiative in Alberta is the establishment by the R.C.M.P. of a satellite detachment on the Saddle Lake Reserve. R.C.M.P. officers will work jointly with two Saddle Lake Band Constables to provide policing services.

We have been told that in Hobbema, the R.C.M.P. is in the process of establishing a satellite detachment. The R.C.M.P. plans to work closely with the Four Nations Tribal Policing, which is composed of Band Constables with limited authority, toward the long-term objective of an autonomous Four Nations Tribal Policing.

The Metis Settlements Association told the Task Force that the Whitefish Band of Atikameg and the Gift Lake Metis Settlement are currently exploring, with the provincial Solicitor General, a proposal to provide a fully empowered three-man regional police force to police both the Reserve and the Settlement. We understand that this police force would have full authority, limited only by a protocol to be negotiated with the R.C.M.P. responsible for policing the area.

These initiatives offer a potential for meeting specifically identified community needs. The Task Force encourages such efforts.

As we have mentioned, the structure of policing evolves as Aboriginal communities and Aboriginal needs change. While most communities demand input into policing priorities, some are planning to adopt their own style of policing. The following excerpt from an article from the Calgary Herald, October 7, 1990, points to the need for appropriate Aboriginal police officer training. Such training should involve Aboriginal and non-Aboriginal officers working in an Aboriginal community. It also points to the distinct community orientation of Aboriginal policing:

> *ST. THOMAS, Ont. (CP) - Raymond Doxtator graduated from Police College last week fully trained to enforce the law as a provincial police officer.*
>
> *But he'll need some "detraining" before he can assume his policing duties at the nearby Oneida Reserve, says the Chief of the southwestern Ontario Native community.*
>
> *"Now we have to de-train him from the OPP (Ontario Provincial Police) method of law enforcement," Alfred Day said.*
>
> *"We feel policing should be done preventatively. Get to know the people, go into the schools," Day said.*
>
> *Doxtator, 28, was one of 271 new officers to graduate from Alymer Police College's 47-day*

> *course Friday. Aylmer is about 20 kilometres east of St. Thomas.*
>
> *Doxtator will soon be driving a cruiser bearing the provincial force's white and black colours, but the insignia on the door will be that of the Oneida nation.*
>
> *He'll join fellow Native officer Chico Ralph, who graduated from Alymer six years ago and went to work at the Oneida Reserve.*
>
> *Ralph, echoing Day's comments, said that when he began work at the Reserve he quickly put aside the methods taught at the College to adopt a more "community" approach.*
>
> *"If I policed the way they taught...I wouldn't be in Oneida today." Ralph said.*[130]

The story reflects that Aboriginal policing is generally based on the Aboriginal cultural imperative of peace-keeping. Pro-active, or preventative work is emphasized for police officers, or "peace-keepers" as they are sometimes called. The Aboriginal approach to policing is sometimes also called "enhanced policing". Because of the emphasis on pro-active policing in the enhanced policing model, the approach is more intensive from a staffing point of view, and thus more costly. This consequence can become a point of contention between the community and its government funders.

In any case, the type of policing appropriate for Aboriginal communities varies considerably. This fact was recognized by the Indian Association which pointed out that:

> *Our First Nations are diverse in circumstance, culture and resources. Due to factors such as language, customs, traditions and contact with Criminal Justice institutions, including laws, police and the judiciary, First Nations are affected differently and respond differently to the Criminal Justice System.*
>
> *Individual First Nations have taken different initiatives relating to the Criminal Justice System. They took those initiatives because they deemed that their specific initiatives were needed and because they were ready to take the responsibility of implementing the initiatives.*[131]

Increasingly, self-government and community control are being asserted as the primary aspirations in Aboriginal communities. In many cases, sovereignty seems to be a basis for these interests. The Lesser Slave Lake Indian Regional Council stated that:

> *Our view of the Criminal Justice System is one of a "foreign" process that results in "foreign" sanctions. Nevertheless, we recognize that the Task Force is dealing with the existing system. The Regional Council will have to concentrate on practical and reasonable recommendations within the existing framework.*[132]

The Task Force views the following statement by the Lesser Slave Lake Indian Regional Council as instructive and practical, and in keeping with the principle that one must build upon the successes of the past:

> *The Lesser Slave Lake Indian Regional Council is proud of its track record, the credibility it has built up over the years, and its vision of Indian control over their future as communities with a distinct identity, culture, language and aspirations. Among these aspirations, controlling their own Cree Tribal Justice System is a positive goal. However, the Regional Council is also aware of its current capabilities, and recognizes that a gradual transition to control is best achieved by making an impact within the existing system. To start slowly and gradually grow has been the pattern of the Regional Council. For that reason, the L.S.L.I.R.C. submissions are designed to be practical, easily implemented and cost efficient, and capable of fitting within the existing constitutional regime.*

> *Our recommendations are designed to offer a first step on the road to the ultimate goal of a Cree Tribal Justice System within the region of the Lesser Slave Lake Indian Regional Council.*[133]

The Lesser Slave Lake Regional Council reflected these comments in their recommendations for regional policing:

> *That the Regional Council establish its own Police Force to police the nine reserves. There is historical and contemporary precedent for effective Tribal Police. Considerations include:*
>
> *(i) A tri-partite agreement;*
> *(a) funding is paramount;*
> *(b) jurisdiction;*
> *(c) training phases.*
>
> *(ii) Dual Enabling Legislation.*
>
> *(iii) Appointment of an Independent Police Commission pursuant to the enabling legislation.*
>
> *(iv) Hiring of an experienced Chief of Police.*
>
> *(v) Hiring, training, discipline, administration, operations.*
>
> *(vi) "Detachments" located on each Reserve with large population.*
>
> *(vii) Essential R.C.M.P. liaison work.*
>
> *(viii) An independent complaint process.*[134]

The Lesser Slave Lake Indian Regional Council also commented on the intent to include affirmative action programs which would be *"in place as the Force is set up."*[135]

These recommendations for a regional police force show the vision and aspirations toward Aboriginal self-government and community control which are emerging. This proposal for a regional force differs markedly from the existing Tribal Police Force of the Blood Band and the autonomous Louis Bull Force.

Regional Indian police forces and Native Police Commissions are not new policing models. The Task Force has been told about the Dakota Ojibwa Tribal Council's policing model which involves an Indian Regional Police Force serving eight Reservations in Manitoba. The Six Nations Regional Police Force in Ontario is also a regional policing model which seems to have earned the reputation of being a progressive model.

The advantages of regional Aboriginal policing are similar to the advantages of any larger policing agency, for example, the availability of transfers and promotions; uniform standards of policing, recruitment, and training; political independence; and perhaps just as important, the achievement of an economy of scale. This latter point is a clear advantage in comparison to individual Band or Tribal policing arrangements. However, it can be an obvious disadvantage in comparison to a larger established police force such as the R.C.M.P.

In any event, the Task Force supports the development of these initiatives when and where it is practical and financially feasible to do so. The Lesser Slave Lake Indian Regional Council has suggested to the Task Force that all proposals be scrutinized under the three "E"s': they should be efficient, effective and economical.

The Task Force Recommends:

2.108 That Canada and Alberta meet formally to outline a comprehensive policy framework to guide the development of policing programs, and that the respective Aboriginal communities be consulted in the process. Given the increasing Indian population on reserves and the high crime rate, it is clear that these communities will demand more policing program services. A Federal Inter-Departmental Task Force on Indian Policing Policy (1990) has stated that the jurisdiction of on-reserve policing is shared by the federal and provincial governments. However, the exact measure of the respective responsibilities has not been defined.

2.109 That funding responsibilities by the federal and provincial governments be identified clearly in relation to policing programs and in accordance with the overall policy. Clarification of funding responsibilities will enable Aboriginal communities to plan more easily for the administration of their programs.

2.110 That federal and provincial governments continue to support community-based, community-managed, and community-controlled programming as a legitimate way for Aboriginal people to gain greater control over their communities and programs, and that policing services be recognized as a component of the community program.

2.111 That where Aboriginal communities assume the responsibility for policing themselves, they be given the full benefit of the experience and expertise of established police forces such as the R.C.M.P. as well as support and guidance from the provincial Solicitor General's Department. Without this support, promising initiatives such as the Louis Bull and Blood Tribe policing programs will likely fail.

2.112 That police services in Alberta reflect, at minimum, the cultural make-up of the community it polices.

2.113 That Aboriginal style policing or peace-keeping be formally recognized in government policy as the police service required on Indian Reserves and Metis Settlements/communities of Alberta.

2.114 That, where practical and feasible, the responsibilty for regional policing arrangements and police forces with Aboriginal Police Commissions be assumed by Aboriginal communities requesting this service.

2.115 That, in the context of federal-provincial funding arrangements, the provincial government develop a policing

policy which outlines short and long-term policing strategies and associated funding responsibilities in relation to the various policing models and options available.

2.116 That the provincial government policing policy serve as a framework for the evolution of provincial policing arrangements over the next decade, and that this policy also address a Provincial Aboriginal Police Service as a contingency.

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3.0 Legal Aid

Preamble

In its Brief to the Task Force, the Legal Aid Society indicated the fundamental purpose of Legal Aid:

> *[It] is to ensure that all people enjoy the right to equality before the law and that no person goes unrepresented in the legal process, due only to the lack of financial resources.*[1]

The Task Force heard a considerable amount of criticism levelled at the Legal Aid system of Alberta as it is currently delivered to the Aboriginal people. It should come as no surprise that in the opinion of Aboriginal people, the goal of providing "the right to equality before the law" has fallen far short of the mark. Of all components of the criminal justice system criticized by Aboriginal people, Legal Aid ran a close second to the police, who received the most criticism.

A factor of relevance to the administration of Legal Aid is the level of the plan's acceptance by Aboriginals. The Neeyanan Association of Peerless Lake expressed its opinion quite bluntly:

> *The people of Peerless Lake do not associate "Legal Aid" with justice - we have little or no involvement with Legal Aid lawyers. As for Legal Aid - to us it's of no value. We have found from sad experience, that Legal Aid lawyers come into sight about five minutes before one of us goes to Court - he has no case, no communication with or understanding of his Native client. He usually suggests that his client pleads not guilty "and we see this as merely a way of using us to himself further work". To the Legal Aid lawyer, we are just guinea pigs, in the bad experiment of "Natives before the Law." He goes through the meaningless farce of defending his Native client (whom he has barely met, scarcely knows, and doesn't communicate with beforehand.) Nothing is accomplished by the process. It merely reinforces the disillusionment and cynicism of all concerned.*[2]

This condemning exposé of the plan is quite typical of comments in other Briefs and presentations. It is indicative of some very strongly held beliefs about the real value of Legal Aid to Aboriginal people.

Some of the early criticism received by the Task Force was communicated to a number of representatives of the criminal justice system. Several provided a response. The Criminal Trial Lawyers Association of Alberta, a large group of lawyers who provide service through Legal Aid, took note of the remarks. The Association was invited to present a Brief, but declined. Reasons included the short time frame for submissions, and the fact that only groups, organizations and associations were permitted to make representations. In addition, the President stated:

> *At our general meeting on May 27, 1990 some members also expressed the opinion that the C.T.L.A. should not be participating in this inquiry because the Task Force is addressing issues that have already been explored in a very comprehensive fashion by the Kirby Commission.*[3]

Since the 1978 Kirby Report, matters related to Aboriginal people and the criminal justice system have changed substantially. One only has to look at the number of incidents and inquiries involving Canadian Aboriginals to illustrate this point. Unfortunately, the Criminal Trial Lawyers Association seemed to disagree. We regret that the Association did not participate in the hearings, especially since legal aid funded lawyers received so much criticism. The Association's input and perspective on the many issues raised by Aboriginals would have been of benefit to the Task Force.

To review the Legal Aid system as it affects the Aboriginal people of Alberta, the Task Force has examined Briefs, visited a number of Indian Reserves and Metis communities, and met with a host of serving prisoners. We also met with the Executive of the Legal Aid Society, and corresponded with Legal Aid as well as with the Law Society of Alberta. We discovered harsh critics of the legal aid system in the Aboriginal communities, to which the quotations which follow will attest.

It is not difficult to understand that serving prisoners are the least pleased with their Legal Aid representatives. Examples range from the obvious, *"he failed to get me off,"* through *"poor plea bargaining results," "rushing the accused through the process," "not understanding the language and culture,"* to the most cutting of all comments that *"the Legal Aid system is a joke."*

Yet, the Task Force has witnessed some very able and committed defence counsel representing accused Aboriginal persons in the criminal Courts. We do not agree with all of the critics, nor with all of the criticism on the value and work of many of the lawyers who provide legal aid services in Alberta. We have, in fact, heard from some Legal Aid funded lawyers who are members of the Indigenous Bar Association of Alberta. However, we would have preferred to have had input from more defence lawyers active in the legal aid system. Because of this lack of input the information received by the Task Force does not address all of the deficiencies in the present legal aid system that have been identified by Aboriginal people.

Findings and Recommendations

Term of Reference:

Legal Aid 3(a)

to determine the extent to which Indian and Metis people involved with the criminal justice system are aware of the availability of legal aid, how to obtain legal aid and the extent to which legal aid is presently provided following arrest, when appearing before a Justice of the Peace, or when first appearing in Court.

Awareness of the Availability of Legal Aid

Few Briefs commented on awareness of the availability of Legal Aid. However, all prisoners with whom we spoke seemed to be acutely aware of it and most, including young offenders, had made use of legal aid services at some time in their lives.

The Task Force concluded that Legal Aid is generally known by Aboriginals who come into contact with the criminal justice system. However, some community members, for example, in a public meeting in Paddle Prairie, commented about Legal Aid: "*We don't hear about it. We don't know how to access it.*" It seemed that Legal Aid was not well known or understood in the more isolated communities:

> *The Legal Aid services are located 175 miles south of here, also people here don't understand how, or if, Legal Aid lawyers are to be paid. Again, a lack of information to the general population of our community. To sum up, Legal Aid does not provide for us any really useful functions and we much prefer to use other sources of assistance. If we were to use a Legal Aid lawyer, he'd need to work with a Cree interpreter, and spend much more time familiarizing himself with the cases. We do not see much use of the system, as it stands today.*[4]

More education and outreach by the Legal Aid Society would make the service better known in these areas. The same problems are not apparent in urban areas where most people and groups had a good knowledge of the availability of Legal Aid. In addition, there are no shortages of lawyers in urban areas. Competition by lawyers for Legal Aid business is evident.

The Legal Aid Society made these comments about service to remote areas:

> *Legal Aid is keenly aware of the suggestion that services to remote areas need to be increased. Submissions to that effect were made to the Legal Aid Task Force. Similarly a number of submissions to the Task Force also refer to difficulties people face in contacting Legal Aid when there is no Legal Aid office in the near vicinity. Legal Aid has strived to correct this problem. During the past decade, Legal Aid has added a number of remote locations to which Legal Aid interviewers travel on a regular basis. In the Peace River area, two part-time Legal Aid offices have recently been opened: High Level and High Prairie, each for three days a week. Perhaps today, Legal Aid has yet to satisfy this requirement, but it is fair to say that Legal Aid will continue to address this matter with a view to satisfying it bearing in mind that from a practical and a budgetary point of view, it may be impossible to provide service in every remote location in the Province where there may be individuals requiring the services of Legal Aid.*[5]

There is no question that providing service to remote areas is a problem for Legal Aid, at least in its present form of delivery. The Task Force offers some recommendations to address this matter, as well as other matters perceived by Aboriginals as deficiencies.

Awareness of How to Obtain Legal Aid

The subject of whether people are aware of how to obtain legal aid was not addressed directly in Briefs. We noted that in public meetings, awareness ranged from high to minimal. In some cases it was non-existent. Sentenced offenders did not express concern about lack of awareness of how to obtain Legal Aid. Indeed, most had an excellent and detailed working knowledge of the system because they had used it more than once.

The Legal Aid Society does not presently view the provision of public legal education as part of its mandate. The Society's view of public legal education was not clear to the Task Force. However, we are concerned about the education of Aboriginal people about Legal Aid itself. One Brief made this point as follows:

> *Legal Aid should make regular visits to the community for educational purposes in addition to accepting and approving applications at the local level. Again, this service should be available in Cree.*[6]

We agree with both of these statements. As Aboriginal people are one of the major users of the service, it is not difficult to understand their desire to have access to legal aid education in their communities, as well as to brochures and other literature in their own language. Other Briefs addressed the need for criminal justice system literature in Dene Tha' and Blackfoot languages. Legal Aid should develop basic information packages about Legal Aid in these and other relevant languages to increase awareness about how to obtain Legal Aid.

The Task Force also believes that some standardized Legal Aid signage should be prepared by the government, to be displayed in all police lockups, penitentiaries and jails. At present, there appear to be no uniform requirements. The displays differ in detail and size, as do the lists of names of Legal Aid funded lawyers and phone numbers available in the police lockups, penitentiaries and jails we visited.

Extent to Which Legal Aid is Provided

(a) Following Arrest

We repeat that the problems experienced by Aboriginals in remote areas, in all aspects of the criminal justice system, are much greater than those of urban Aboriginals. This matter is addressed in detail in the section of this Report dealing with the right to counsel, a right which is provided to all Canadians under the Charter of Rights and Freedoms. We refer the reader to the portion of that section insofar as it applies to Legal Aid.

One submission stated clearly and simply:

> *Upon arrest, there is no Legal Aid worker available.*[7]

While telephone contact may be permitted, in general arrested Aboriginal persons who are eligible rarely see a Legal Aid funded lawyer until shortly before going to court. In many cases, they see duty counsel at first appearance. Duty counsel often seek adjournments to permit themselves or other counsel to be retained. This situation adds to the red tape syndrome of Legal Aid to which The Honourable Mr. Kirby referred in his recommendations. It may result in a remand in custody for the accused person while seeking advice.

(b) Appearing Before a Justice of the Peace

In appearances before a Justice of the Peace in remote areas, it is almost certain that Aboriginals will not have counsel. As a consequence, Aboriginals complain that they are often denied bail because the Justices of the Peace listen only to the police. Justices of the Peace with whom the Task Force met, denied that this was the case. However, the fact remains that they must rely on the police for a presentation of the Crown's position with respect to bail, and that usually no one speaks on behalf of the accused person.

A study by a Hearing Officer in Calgary provides information about urban areas:

> *Normally there are only three people involved in the Bail Hearing process. The accused, the Hearing Officer and the Presenting Officer. It is not unusual for the Crown to be represented by a Crown Prosecutor, and it is not unusual for the accused to have a lawyer present with him at the Bail Hearing.*[8]

These observations illustrate that there are "normally" only three people involved with the bail hearing process. The probability of the presence of a Legal Aid funded lawyer at a Justice of the Peace hearing for an Aboriginal accused person is reduced even more:

> *However, there was a noticeable tendency for the Natives studied to adjourn themselves, in custody, to the next sitting of Provincial Court, in order to receive assistance from the Native courtworker. In one instance, the Native accused appeared, and requested an adjournment in custody so that Native courtworkers could represent him. This request was made prior to the charge being read or the Crown even indicating whether or not they intended to show cause.*[9]

The same author states:

> *A number of the accused, both Native and non-Native, had their bail hearings adjourned in order to secure the services of a lawyer or courtworker.*[10]

The Task Force has concluded that, while there are occasions when a Legal Aid funded lawyer is present when an Aboriginal appears before a Justice of the Peace, those occasions are probably rare. The apparent unavailability of lawyers funded by Legal Aid in urban areas at this stage in the criminal justice system is difficult to understand. It has an obvious negative impact on Aboriginals. It was not possible to identify readily the reasons for this unavailability as only scant evidence was presented to the Task Force for examination. Criteria for eligibility may well be a consideration. However, if Aboriginal accused persons are not eligible for Legal Aid due to a summary conviction offence, then we must ask why they are in custody in the first place. We cannot comment further, but we urge Legal Aid service providers to examine the question carefully and critically.

(c) At First Appearance in Court

The availability of Legal Aid funded counsel where eligibility was not in question was not a problem at the point of first appearance in a Provincial Court.

Lawyers are readily available in both urban and rural Alberta at the stage of first appearance in court. Defence lawyers on the Legal Aid roster are present in court as duty counsel, to seek business, or to represent other clients. It is not uncommon to hear representations to the courts to have brief adjournments for accused persons to seek advice and to engage counsel.

In this setting, the choice of counsel may well be limited to lawyers who are present, but an unrepresented accused person has few if any options under such circumstances. It stands to reason that the first lawyer available is engaged. We met with Aboriginal inmates in custody at first appearance who stated that they signed the necessary Legal Aid forms some five minutes before going into court, pleading guilty to an offence, and being sentenced. The Task Force was left with the impression that Aboriginal people were being used, and that the Legal Aid system was being abused. We were told that, in these circumstances, accused persons were informed later that they owed the Legal Aid Society plan a substantial amount of money for this service. However, they had no opportunity to review the account with the Society.

In summary, the Task Force noted that at first appearance in Court, Legal Aid funded lawyers were readily available to those who were eligible for legal aid.

Term of Reference:

Legal Aid 3(b)

To identify the deficiencies that exist between the present system of legal aid respecting the needs of Indian and Metis people involved with the criminal justice system, and to determine how these deficiencies can be effectively addressed.

Identifying Deficiencies

Deficiency is defined as *"a lack or absence of something needed or required; incompleteness"*.[11]

It should be noted that the only Term of Reference requiring the Task Force to identify deficiencies relates specifically to Legal Aid. The Task Force wishes to express its concern about the initial premise that there are deficiencies in Legal Aid. The Task Force is also concerned that such an assumption invites the presentation of seemingly endless lists of complaints without indication of positive factors or solutions to problems. Almost everyone who spoke or wrote to the Task Force found a number of deficiencies with Legal Aid in relation to the needs of Aboriginal people. The difficult task of determining how these deficiencies could be addressed effectively was largely left to the Task Force. We will first review the deficiencies of the Legal Aid system, as perceived by Aboriginal people.

(a) Not Representing the Point of View of the Client

One complaint heard frequently was that Legal Aid-funded counsel were not seen as representing and fighting for the point of view of their clients:

> *Further, the legal representation appointed to us by the Court otherwise known as Legal Aid Society, has an obligation to fulfil to us. It is their duty to defend and to obtain for us the fullest protection the law allows. It is also their responsibility to ensure we are not convicted unless proved guilty beyond a reasonable doubt. Again it is their duty to see that the penalty imposed is no heavier than that set by law. In our defense they mustraise every issue, advance every argument, and ask every question which will help our case. This, however, is not always the conduct of these legal Aid lawyers! and we suffer the consequence.*[12]

> *6. Legal Aid: -- the lawyers that are involved in this program are not informing the individual of all their rights. Example: Charge assault -- The common legal aide advice is plea guilty and we'll get a deal on the charges from the Crown. Deals from the Crown are not the answers; the main reasons for a court system is plea guilty or not guilty. A person is not guilty until the courts have proved guilt of the individual based on evidence presented by the Crown. Legal Aide personal are not representing their clients to the best of their abilities.The result of this can be documented by the means of a survey of clients, legal aide representaives, and time spent in custody. Every Candian regardless of race, creed, political beliefs,religious beliefs is entitled to equal and fair tratment from the Justice System.*[13]

> *Legal Aid A majority of Natives feel that legal aid lawyers are not relly giving their best when it comes to their defence. They are merely patronizing and rarly make any attempt to present the Judge orprosecutor with alternate solutions.*[14]

> *Many legal aid lawyers do not seem to care if they win or lose a case because they are being paid at a set rate below normal standards.*
>
> *This situation leaves defendants at a great disadvantage in court. The reason for this is that prosecutors try their best to convict the accused person. Their jobs and an opportunity for career advancement hinges on their conviction rate.*
>
> *On the other hand, legal aid lawyers do not face the same pressures that prosecutors do. They are paid a flat rate whether they do a competent job or not. A situation such as this does not always motivate them to try their best for their clients.*[15]

(b) Not Spending Enough Time with Clients

In general, Aboriginal people do not see Legal Aid-funded lawyers as spending enough time with their Aboriginal clients:

> *Legal Aid lawyers usually have little knowledge of the case and very brief contact with the client.*
>
> *A Settlement member usually is not able to meet with the lawyer provided to him until shortly before the court date, especially if the lawyer must travel from Edmonton or other cities and the client is in a remote community. This makes it difficult for the legal aid lawyer to ensure that their clients are fully aware of their rights and the options they have available to them, and it may not allow the lawyer enough time to prepare an adequate defence for his client.*
>
> *Settlement members should have legal aid services made available to them on the Settlement. An office can be maintained on the Settlement where members can access information and advice about the legal system so they can prepare themselves for their day in court.*
>
> *An alternative to this suggestion would be to maintain an office in a nearby town which can provide service to more than one community, however, this would reduce the accessibility of the service to some people.*[16]

> *Have defence lawyers provide the courts with evidence that they have had ample time with their clients to fully understand the facts of the case.*[17]

> *Some lawyers spend very little time talking to their clients before court even though they have had ample opportunity.*[18]

> *Many native and non-native clients are represented in court by Duty Counsel. These lawyers have a large number of people to represent and a very short period of time in which to gather information from all those who wish to be seen. An accused person must represent herself to her counsel in a brief period of time. Since native women tend to be less verbal than non-native women and since native women often do not speak in their own defence, a lawyer has little information on which to base a defence. It is extremely important that Duty Counsel be allowed the time to draw out information from hard to reach native people.*[19]

(c) Not Understanding Aboriginal Languages and Cultures

Frequent comments were that Legal Aid-funded lawyers in general do not understand the Indian and Metis cultures, and are further limited by language barriers. A deficiency in cross-cultural training was highlighted in many of the Briefs, as were problems with language:

> *Any attorney who does not investigate and present the Native heritage and cultural aspects relating to his or her client, is depriving that person of competent representation and a fair trial.*[20]

> *...lawyers to take Native awareness and culture programs to enhance understanding of clients and the situations involved.*[21]

> *For some time, the Canadian Bar Association has been concerned that Native people experience a variety of difficulties within Canada's legal system. The CBA has been responsible for generating at least two recent studies in this area: "Locking up Natives in Canada" by Professor Michael Jackson, (1988) and "Aboriginal Rights in Canada - An Agenda for Action" (1988). Members of the National Native Law Subsection of the CBA appeared before the Standing Committee on Aboriginal Affairs on December 6, 1989 to discuss the recommendations proposed in the above-mentioned reports.*

> *These studies indicate that one of the reasons for the difficulties encountered by Native people is that Judges and lawyers are not sensitive to Native social, political and cultural institutions, beliefs and values. One recommendation of the CBA's studies as a means to improving the current situation has been cross- cultural education programs for lawyers and Judges. We believe that cross-cultural awareness training is important for any lawyer who intends to provide legal services to Native people.*[22]

> *Legal Aid lawyers should be required to take courses in Native history and contemporary issues...*

> *Since a large number of the clients are Native it would be appropriate for them to take these types of courses. This would help them explain to the Judges or juries the socio-economic and cultural background of their clients and help to shorten the cultural gap that exists in the court system. This would benefit the Metis clientele substantially.*

> *Lack of knowledge due to language barrier as English is their second language.*

> *Staff have poor interpersonal skills in working with minority (stereotyping, discourteous and unhelpful).*

> *They assume that anyone accessing their service is a potential abuser.*

> *PR and Promotion of the services provided.*[23]
>
> *The Legal Aid appointed lawyer has no understanding of the Dene Tha' language and very limited awareness of the culture. How can s/he make an honest effort at representation? Especially when s/he has no time to meet with the client before court.*[24]

Linguistic and cultural barriers operate also with a Legal Aid-funded lawyer assisting an accused person in court. This situation leads to the perception that, because of language and culture, the lawyers are not useful to Aboriginal offenders who face the awesome machinery of Canadian justice.

> *When a Native appears in Court, the Judge uses big words. Many people here don't really understand English very good. Even though they have Legal Aid, they don't really help the person in Court. They're afraid of the Judge. They don't want to say anything. Whoever's translating, they add a little bit more to it. When the Judge asks a question, they say: "I don't know." That's why they're put behind bars.*[25]

A member of the Indigenous Bar Association made the following remarks in his Brief to the Task Force:

> *It has been my experience that Native people want a lawyer who understands them and appreciates the points they are trying to make. I have had Native clients who would prefer to retain me at their own expense rather than have a lawyer appointed by Legal Aid even where my advice to them is unfavourable.*
>
> *Where the lawyer's background is too dissimilar to that of the Native person's or the lawyer is too rushed or portrays an uncaring or impatient attitude, the Native person feels dissatisfied.*
>
> *It makes no difference whether the lawyer is Native or non-Native if he or she establishes a rapport with the Native client. A Native lawyer might have an advantage in establishing a rapport but it is the rapport that is important. Knowledge of the Native community and its members is an important asset in establishing a rapport with Native people.*[26]

It is important to note the assessment of what Aboriginal clients expect of a lawyer. We believe that the Indigenous Bar Association member expressed the expectations well when he underscored the need to establish rapport. Judging from our observations in the courtrooms of Alberta, it appears to be almost impossible for Legal Aid-funded lawyers to take the time to do so. The rushed atmosphere and hectic pace of an everyday docket or first appearance court, where many Aboriginal offenders plead guilty to offences and are sentenced, do not provide positive conditions.

The Legal Aid Society of Alberta responded to the issues of language and culture:

> *This issue was raised in several briefs which stated, among other things, that lawyers had no knowledge of Native culture or language and that legal aid staff similarly lacked sensitivity to Native cultural differences. It was suggested that information about Legal Aid should be available in Native languages, and further, that Native staff should be employed at Legal Aid offices.*
>
> *The suggestion of having posters and pamphlets produced in Native languages was investigated by Legal Aid's staff. Legal Aid concluded that because there are so many dialects, and because so few Native people may be in a position to read and understand the posters and pamphlets, it was preferable to expend Legal Aid's energies and dollars on other means of publicizing Legal Aid services.*
>
> *Legal Aid does not have an affirmative action hiring policy. There is presently one Native person on staff, and in the past there have been up to three Native employees out of a total workforce of about 85. The annual staff*

> *conference held on October 5, 1990 provided some training in cultural awareness to all Legal Aid staff in the province. It should however be noted that in addition to an exposure to cultural awareness issues as a result of the recent staff conference, many of the employees in Legal Aid's regional offices have previously attended Native awareness seminars of their own initiative and thus have a certain sensitivity to Native cultural differences.*
>
> *The matter of cultural awareness among lawyers retained by Legal Aid on behalf of Native people is an on-going problem. Clearly, it would be preferable that all lawyers, particularly those lawyers retained on behalf of Native persons, be culturally aware and sensitive to the cultural differences of Native persons. Legal Aid is presently examining ways in which it might improve that awareness among the lawyers it retains. It should be noted that the Canadian Bar Association, Alberta branch, is holding a cross-cultural training seminar for lawyers in November. Legal Aid intends to encourage all lawyers on its roster to attend. In addition a number of senior staff of Legal Aid will be attending. If Legal Aid concludes that the seminar did not address all of the cultural awareness issues that in its view should have been addressed, it will consider holding another seminar on cultural awareness.*[27]

Legal Aid's refusal to provide literature in Aboriginal languages is an example of the continuing insensitivity imposed on Aboriginal people by the various elements of the criminal justice system. The Legal Aid Society stated that it employs one Aboriginal person. Yet, when Legal Aid staff investigated the possibility of producing pamphlets in Aboriginal languages, the conclusion was, amazingly, that because so few Aboriginal people seemed to be in a position to read and understand the pamphlets, it was preferable to spend energy and dollars to publicize Legal Aid services by other means. The question remains of whether the Legal Aid Society thought of asking the Aboriginal people for their views.

The Task Force is of the opinion that there are two distinct needs in this area: one for the production of pamphlets in Aboriginal languages, and the other for cross-cultural training for lawyers funded by Legal Aid.

d. Quality of Legal Aid Services and Choice of Counsel

The quality of the Legal Aid service delivered to Aboriginal people was addressed in many Briefs, and scrutinized closely. The choice of Legal Aid counsel service is fairly recent. It is not well known to Aboriginal people, nor is it well understood. These closely linked issues appear to be two of the greatest deficiencies of the program in the eyes of Aboriginals. Several examples of this view will illustrate the point.

The Alexander Tribal Government brief deplored the socio-economic circumstances in which their members find themselves, and expressed concern about the availability of and access to legal counsel. They saw the financial burden of hiring a lawyer as a major burden. They made a number of suggestions to improve access to legal counsel. One goal would be to provide:

> *Equality of access to appropriate legal counselling, at a level and quality available to other people across Canada.*[28]

Implicit in this goal is the apparent inequality of legal service currently received through Legal Aid.

The Federation of Metis Settlements stated a similar concern:

> *The majority of Native people who get into trouble with the law have to depend on Legal Aid lawyers to represent them in Court. The reason for this is that many cannot afford to hire a regular lawyer. In general, it was thought that the quality of Legal Aid lawyers and their determination to defend their clients was below expectations.*[29]

To overcome some of the deficiencies in the service, the Federation suggested:

> *Bring in more out-of -town legal aid lawyers.*
>
> *It was suggested by some Settlement members that out of town legal aid lawyers be brought in to represent Native defendants. Most of the legal aid lawyers that are available to the accused reside in the non-Native community where the crime has been committed. Would the offenders receive unbiased representation from their lawyer? Many believed the legal aid lawyers would not try as hard to defend their clients because the crime was committed in their home town. Their home community might put pressure on them if they win too many cases. A remedy to this is to bring in out of town legal aid lawyers who would not be subjected to community pressures.*[30]

The Lesser Slave Lake Indian Regional Council asked its member bands: *What is the quality of duty counsel and Legal Aid services presently rendered to Indian accused?*[31]

The general answer to the question was "widespread dissatisfaction."

> *Legal Aid and Duty Counsel are a "white" delivery of legal services system made to fit Native concerns and needs. Duty Counsel are rarely equipped to deal with the cultural matters that adversely effect sentencing when not dealt with. Legal Aid is remote, often unknown to potential Indian clients, and employs lawyers who are unaware of the specialized legal status of Indians, and the cultural background from which they spring. They often have no roots in the communities they serve, and as a result are unable to effect a working relationship with their clients. The member Bands of the LSLIRC are not enamoured with ... Legal Aid.*[32]

The Metis Association of Alberta stated about the quality of Legal Aid service:

> *We have received comment on the quality of legal services available under the Program. It appears inexperienced lawyers make up the majority of professional participants. While the impact of inexperience is most likely to be felt among the users of the Program, and Native clients form the largest group of beneficiaries, it is appreciated that young lawyers are expected to develop skills by actualizing their responsibilities as lawyers. No data exists whereby one might conclude the paying client receives better service than those who depend upon the Fund. We trust all lawyers in Alberta act upon a sense of duty and we would expect to find no difference in performance or result regardless of the source or amount of fee.*[33]

The Native Brotherhood of Drumheller said:

> *Legal Aid doesn't hire the proper lawyer for the crime. Top lawyers won't take Court cases involving Legal Aid, they want more pay than Legal Aid provides.*[34]
>
> *The quality of Legal Aid is always in question. A lawyer will try to plea bargain to a lesser charge whether or not the offender is guilty, i.e., murder to manslaughter. The incentive for expert legal counsel needs to be addressed. Not many offenders are aware that if they are charged under certain statutes, they have a choice of legal counsel, not only the one recommended by Legal Aid. Legal Aid has sometimes refused other lawyers for offenders and the offender is stuck with [what] is sometimes, euphemistically termed, "a dump-truck."*[35]

With respect to the question of quality of service, the Legal Aid Society of Alberta stated that:

> *Legal Aid does not see its role as judging the competence of lawyers. All lawyers on Legal Aid's roster are members in good standing of the Law Society of Alberta.*[36]

The Chairman of the Bencher's Legal Aid Committee of the Law Society of Alberta responded to the issue of quality of service and choice of counsel as follows:

> *I am responding to your letter of 17 April 1990. In that letter you have related to the Law Society the concern of Native persons as to the quality of Legal Aid representation which they are receiving. It is most difficult to respond to that enquiry in the absence of specifics, however, some general observations may be made.*
>
> *Over 2,000 of the practising lawyers in the Province of Alberta are on the Legal Aid Roster. Last year approximately 1,400 of those lawyers on the Legal Aid Roster participated on one or more Legal Aid files. It is clear that in the area of criminal law the number of lawyers are providing their Legal Aid services to the program is much more restricted. It is interesting to note, however, that the services provided to Legal Aid applicants by the Bar, are provided in even measure by junior, intermediate and senior counsel. Despite the relatively low Legal Aid fees which are paid to counsel (at an effective rate of $44.00 per hour) there are many senior counsel who participate in the Legal Aid plan who regard such participation as a professional obligation.*
>
> *In order to better respond to your enquiry, I interviewed two Native Court workers here in Calgary and related to them the comments made in your letter and sought out their own observations as to the quality of representation received by Native people. Each remarked that there certainly were instances where they felt the quality of representation was inadequate but each also felt that there were many instances where Legal Aid lawyers had done an excellent and comprehensive job for the clients. If there was a complaint to be found, it was that too few lawyers made use of the Native counsellors to obtain background information necessary to understand the circumstances of the case. I was also very much surprised to learn that Native counsellors did not appear to be aware of the choice of counsel option and this, obviously, indicates a real communication problem which I will certainly address in my capacity as one of the Benchers' representatives on the Board of the Legal Aid Society. It may well be that although Native applicants for Legal Aid are being advised of the right to choose counsel, they fail to appreciate the significance of that right. It may also be that as many Native persons rely on the advice of Native Court workers, who do not appear to be informed of the change in the Legal Aid policy with respect to choice of counsel, this right is simply not being exercised.*[37]

The Chairman of the Bencher's Legal Aid Committee made a suggestion for counteracting the perception of poor quality Legal Aid counsel:

> *If services provided by any individual lawyer are regarded as less than adequate, I am sure that the market place will speak, especially given the close-knit nature of Native communities.*[38]

The market place may well speak, but judging from our examination of the situation, it does not speak very loudly or often when issues arise between members of the legal profession and Aboriginals. In such situations, it must be remembered that persons who receive Legal Aid are poor, often have little education, and are generally ill-equipped to complain about a lawyer who has represented them in court. The Task Force was told of an instance in which an Aboriginal person who complained about the service received from an individual lawyer was sued by the lawyer who was the subject of the complaint. Native Counselling Services of Alberta stated that the Law Society of Alberta declined to get involved because it viewed such situations as issues between lawyers and their clients.[39]

In the specific matter of choice of counsel, the Task Force was told that:

> *At present, approximately 60% of all Legal Aid applicants are exercising their right to choose counsel. The remaining 40% of Legal Aid applicants, who do not know a lawyer or wish to pick a lawyer, are assigned counsel on a roster basis.*[40]

Several persons in the Legal Aid system expressed surprise that the right to choice of counsel is not widely known among Aboriginals. This lack of awareness was substantiated during our visits in Aboriginal communities. The Task Force also noted that some Native Counselling Services of Alberta courtworkers were not aware of the explicit right to Legal Aid counsel. We agree with the President of the Legal Aid Committee of the Law Society of Alberta that this is a concern. We received the following relevant comments:

> *Not many offenders are aware that if they are charged under certain statutes, they have a choice of legal counsel, not only the one recommended by Legal Aid.*[41]

> *Among Native people there is a stigma for lawyers provided by Legal Aid. Dubbed "welfare lawyers", Legal Aid lawyers are perceived to not care about the client and aren't as competent as "real lawyers". This is due, in part, to the lack of choice of lawyers, and the monopoly some lawyers have in isolated communities.*[42]

The Legal Aid Society of Alberta responded to the matter of choice of counsel by providing its history and addressing some issues:

> *The Legal Aid Task Force received many submissions recommending a policy be adopted to permit legal aid recipients to choose their own lawyers. The Task Force recommended to the Society that such a policy be adopted in all cases "where geographically feasible". In November 1989, Legal Aid adopted the recommendation and authorized the implementation of a broadly based choice of counsel program. Legal Aid was of the view that such a program should provide clients with a greater degree of confidence in the lawyers who would be representing them.*

> *The issue of choice of counsel in remote areas also relates to the issue of quality of service; there are no easy answers to either issue. In the more remote areas, there are relatively few resident lawyers with the result that those resident lawyers receive, whether by choice of counsel or otherwise, a great many cases from Legal Aid. The potential is there for at least the perception that a lawyer cannot provide adequate service if that lawyer has so many clients. Certainly, there are many lawyers in the larger centres in the province who receive as many or more legal aid assignments in a year as do their colleagues in remote areas. The lawyers in the larger centres are less obvious though; lawyers in remote areas are noticeable because there are so few of them.*

> *A further question which arises where dealing with the choice of counsel policy is whether there is truly choice of counsel available to a client when there are only one or two resident lawyers who are reasonably available? If one concludes that a client is entitled, as of right, with a wider choice of counsel, then what limits, if any, should there be on the area from which a client may select counsel and what limits, if any, should there be on the costs in paying lawyers for travel time and expenses to travel from larger centres to the remote areas? These issues have been debated at length by Legal Aid. Although the existing policy may not be perfect, Legal Aid considers its present policy, in the circumstances, appropriate particularly having regard to the budgetary impact of expanding the choice of counsel program.*

> *A related issue stemming from the factual situation of many clients and few lawyers in more remote areas is the spectre of delay of the judicial process by reason of a lack of lawyers. The same questions as raised above inevitably arise in addressing this issue. Is a client, as of right, entitled to an unrestricted choice of*

> *counsel and if so is Legal Aid required to spare no cost in retaining such counsel to insure that there can never be any criticism of Legal Aid in having caused a delay in the judicial process? Clearly, to adopt such a practice, would be to set a standard for Legal Aid which far exceeds and is totally inconsistent with most private solicitor/client relationships, and certainly not in accord with Legal Aid's fundamental purpose.*[43]

One defence counsel, who appeared before the Task Force in its early stages, presented his views on the matter of Legal Aid funded counsel.[44] He had been appointed frequently by Legal Aid. He provided an overall perspective which we never encountered again. He expressed some frustration with trying to assist Aboriginal clients in northern Alberta. We present some of the problems and concerns identified by this defence counsel.

The lawyer said that many of his Aboriginal clients have told him that, during the commission of the offence or shortly thereafter, they "blacked out". They could not remember what happened to them. It was very difficult to provide a defence in such circumstances.

He stated that very often, he must prepare for four or five trials in a day. He has limited time to prepare. Generally, he only sees his clients on the day of first appearance, and on the day of trial. Often, the client makes no effort to see him. This lawyer tried to overcome these problems by making available a free "800" telephone number. It was never used. He also established an office on a reserve, with office hours on Mondays. As he put it, on Mondays in his office on the reserve, "I twiddled my thumbs."

He stated that his Aboriginal clients do not appear to be concerned about serious criminal charges. As a result, "preparations are made in a vacuum."

The lawyer stated that the whole court process is too rushed. He saw it as a "meat grinder". He believed that it is common for some Aboriginal people to plead guilty for things they did not do. He described the Slavey people as very stoic and quiet, and as people who do not argue. He said their understanding of English is very limited. He observed that they answer questions without expansion. In discussing witnesses, he said it was his experience that family feuds provoke false evidence. He was not sure that his [Slavey] clients are open with him.

In discussing solutions, the defence lawyer suggested that the court process should not be so rushed. He saw a need for more court days. Stays and absolute discharges in the jurisdiction in which he operates almost never occur because of the heavy workloads of prosecutors and a high level of recidivism. Fines accumulate to exorbitant amounts that can never be paid. Failure to appear offences are very common. At the same time, he stated, judicial interim release is no problem. Breach of probation offences are common. The release condition of abstaining from alcohol makes it very difficult for most Aboriginal offenders not to breach. He suggested a wilderness camp for young offenders, which would emphasize healing. He said the area could benefit from a resident Provincial Court Judge. Sentencing panels composed of community members would be helpful. He characterized the R.C.M.P. jail as a coercive tool: sit there for a while - it will get you more guilty pleas. He acknowledged that the prosecutor had much discretionary power but used it rarely. He stated that he, himself, could benefit from cross-cultural training. For him, alternatives to jail sentences were the answer to the over-representation of Aboriginal people in Alberta jails.

Generally, Aboriginals do not consider the quality of Legal Aid service to be of high calibre. On the other hand, some Legal Aid funded lawyers who are sensitive to Aboriginal issues have tried to respond to the needs of Aboriginals with very limited success. The responsibility for ensuring competent legal service is not accepted by the Legal Aid Society. Ensuring the competency of lawyers is the responsibility of the Law Society of Alberta. The Task Force is of the opinion that the Law Society's position reflects little concern. The Society would leave such matters to the market place. Some prisoners told the Task Force that they had "fired" their Legal Aid-appointed lawyers. But when 40% of Legal Aid-funded lawyers are assigned from rosters, as appears to be the case where Aboriginals are concerned, it is unlikely that the "market place" remedy will resolve the issue for the Aboriginals. There is clear evidence of much "buck passing" in the responses from the legal community received by the Task Force. The situation is even worse for Aboriginals in remote communities because of "geographical limitations".

e. Eligibility Criteria and Associated Costs of Legal Aid and Reimbursement

Legal Aid eligibility was criticized most severely by Native Counselling Services of Alberta. The agency's comments were based on twenty years of experience in assisting Aboriginal people in the criminal courts of Alberta:

> *Several of NCSA's concerns with Legal Aid have not been resolved since the Kirby Report. The main concern is the frequency with which Native people's applications for Legal Aid are turned down. Many Native people are not eligible for Legal Aid coverage because they have been charged with a summary conviction offence, or because their income is slightly too high. Working Native people with low incomes or seasonal employment often cannot pay for a lawyer but also make too much to qualify for Legal Aid. The most common reason Native people are turned down by Legal Aid, however, is that they have been charged with a summary conviction offence. NCSA is concerned about those individuals who have a valid defence but no representation. They are likely to become discouraged with the legal system and alienated from society as a whole.*[45]

The Legal Aid Society of Alberta also commented on eligibility:

> *The Legal Aid Task Force recommended that Legal Aid review its financial eligibility guidelines periodically. Legal Aid adopted the recommendation. As part of its annual budgetary planning process for the financial year 1991-1992, Legal Aid proposed an increase in the financial eligibility guidelines to become effective in the 1991-1992 financial year. The matter is presently before the Attorney General for its consideration after the Law Society of Alberta approved Legal Aid's proposal.*
>
> *Legal Aid has some discretion, both internally and through its Regional and Appeals Committees, in providing assistance to those persons whose income may modestly exceed the guidelines and who cannot afford to retain a lawyer privately. It has been suggested that Native Counselling staff could provide a valuable service to Native applicants in assisting more of them to write letters of appeal to the Committees and in giving them advice about the factors considered by Committees. Legal Aid fully supports the suggestion. Most, if not all Regional Committees have at least one member who represents Native concerns, and most of these are NCSA staff.*[46]

Another concern, often raised at Task Force hearings, was the restriction of summary conviction offences not being covered by Legal Aid unless there is a "risk of incarceration, loss of livelihood or there are special circumstances which require the provision of Legal Aid."[47] We have documented in our Report and Statistics that Aboriginal people are over-represented in the jails of Alberta. The policy of the Legal Aid Society does not take into account the cumulative effect of a number of summary conviction offences. We have noted that poor Aboriginal convicted offenders who are required to pay fines for a majority of summary conviction offences often cannot pay the fine. The result is an automatic jail sentence. In view of this fact, the Task Force favours a liberal application of the rules governing Legal Aid eligibility for Aboriginal people.

In its response to suggestions for coverage of summary conviction offences, the Legal Aid Society stated that full coverage of all criminal matters would compromise the ability of Legal Aid to maintain and introduce new programs for civil matters.[48] We suspect that the reaction of the Legal Aid Society is based on an assumption of universal application of the suggested program. The Task Force is not calling for universality. Non-Aboriginals are not over-represented in Alberta jails. Aboriginal people require affirmative action in legal representation and, in our view, are entitled to this consideration under Section 15(2) of the Charter of Rights and Freedoms. We suggest that, where the Legal Aid Society funds legal representation for Aboriginal clients, legal aid policy on coverage for summary conviction offences be modified.

Aboriginal Legal Aid clients point to reimbursement as another related deficiency. Native Counselling Services of Alberta stated:

> *While attempting to establish if a client can make repayment to the Society, Legal Aid officers usually solicit the courtworker's opinion about the client's ability to pay. There have been problems, however, with money that has been put up for bail being confiscated to pay Legal Aid lawyer fees. Unless there is a letter indicating that the money belongs to someone other than the accused, Legal Aid will take the clients bail funds as payment. In some cases the bail money has been put up by a friend or relative who is on social assistance or a pension and who needs that money back. Legal Aid also tries to ensure payment by asking Native clients to sign liens against their property. Many Native people would rather go without a lawyer than sign something they don't really understand.*[49]

The Sunchild Band raised a number of questions concerning reimbursement:

> *Legal Aid is available to Natives just as any other individual who qualifies to receive it. Legal Aid is usually obtained through a referral from agencies such as Sunchild Alcohol and Drug Program, Rocky Native Friendship Centre, Native Counselling Services and Social Services. Legal Aid, however, is currently a problem for at least one Sunchild Band member. This person was wrongly accused of a murder of a Band member on the Reserve by an officer who acted inappropriately with given evidence almost immediately following the murder. The person was eventually acquitted with all charges against him dropped. The same case was pursued by another investigating officer who brought the same charges against some other Band members. It is good to see justice being done and carried out yet what about the wrongly accused individual who is stuck paying an $18,500 bill to the Legal Aid Society for defending against wrongfully brought on charges as a result of poor RCMP investigation? Is it fair?*[50]

Native Counselling Services of Alberta made some suggestions regarding the taking of bail money for Legal Aid fees.

The Task Force has adopted one of these suggestions.

Further deficiencies concern consultative and investigative costs:

> *Under the current Legal Aid system, lawyers in the LSLIRC area have reported that no money is available for private investigation of the alleged offence by defence counsel, and that the application process for money to retain experts is agonizing and uncertain at best. Added to the special background of the average Native accused, a further failure of the system to serve the needs of Indian people is evident.*[51]
>
> *Of great importance is consultation between the Indigenous person and his lawyer. The Legal Aid tariff should therefore provide legal fees on an hourly basis for lawyer-client consultations.*[52]

Without adequate funding in these areas, it is difficult to comprehend how a good defence can be provided to poor Aboriginal clients who need representation. As the Sunchild Band pointed out, false convictions create havoc for innocent victims, even to the extent of their being responsible for paying back Legal Aid costs.

f. Complaints and Discipline

The matter of complaints and discipline involving Legal Aid-funded lawyers was briefly addressed with respect to quality of service and choice of counsel. We address it here specifically in the context in which it was raised by Native Counselling Services of Alberta:

> *Another widespread client complaint is the practice of legal aid lawyers reserving or changing pleas unnecessarily, often without consulting the client. By doing so creates long delays in dealing with matters and incurs extra costs for multiple court appearances and a trial. The Native accused agree to these delays as they don't understand the system and can be easily intimidated by the lawyers. The multiple court visits can be very disruptive to employed clients or those who must travel great distances to get to court. The client ends up owing more money to Legal Aid than was necessary and gets the impression that Legal Aid lawyers are just in it for the money.*[53]

Native Counselling Services of Alberta suggested some solutions:

1. *Provide information on the complaint process to all Legal Aid clients as a matter of procedure during the application stage.*
2. *That an investigative body be established by the Legal Aid Society and a group such as the Canadian Bar Association or Criminal Trial Lawyers Association to investigate abuses of the Legal Aid System.*
3. *That meaningful penalties be imposed on lawyers that are responsible for committing these abuses.*
4. *That the complaint process be made less intimidating for clients dissatisfied with the Legal Aid lawyers services.*[54]

The Legal Aid Society responded as follows:

> *It was suggested that Legal Aid should provide information to clients on the complaint process available to a client during the application stage. Legal Aid views this suggestion as being very worthwhile. Legal Aid is reviewing this matter with a view to implementing the suggestion.*
>
> *It was also suggested that the complaint process be made less intimidating for clients who are dissatisfied with the services provided by Legal Aid lawyers. The complaint process couldn't be simpler. The client simply has to write to Legal Aid setting out the nature of the complaint, the lawyer involved, and the case in question. It is difficult in the extreme for Legal Aid to respond to any complaint without being provided with the necessary specifics.*

> *The proposal in the NCSA brief for the creation of an investigative body to investigate abuses of the Legal Aid system and for the imposition of meaningful penalties should be directed to the Law Society because of that body's jurisdiction in disciplining lawyers.*
>
> *To the extent that the alleged abuses of the Legal Aid system would not fall within the jurisdictions of the Law Society, i.e., where the abuse does not relate to a question of competence, or does not otherwise constitute a breach of the rules of professional conduct of the Law Society, the alleged abuse can be referred to the Roster Standards Committee of Legal Aid. This Committee, a standing committee of the Board of Directors of Legal Aid, has the power to remove lawyers from the Legal Aid roster, with the result that legal aid matters will not be referred to that lawyer. In Legal Aid's view that type of penalty is rather meaningful.*[55]

The complaint process was characterized by the Legal Aid Society as simple. After regarding briefs and hearing oral presentations of Aboriginals, the Task Force is very concerned about the Aboriginal client who can neither read nor write in English. For such an Aboriginal person, the process is not simple. That person might only be able to communicate orally in his own tongue.

Elsewhere in this Report, the Task Force has addressed the matter of Aboriginal complaints against components of the criminal justice system, or persons working in this system. We recommended an office known as the Aboriginal Advocate to be established within the Aboriginal Justice Commission which is discussed in the 'Ongoing Process' section of this report.

Alternatives to Legal Aid

Suggestions were made to the Task Force to consider at least four alternatives to the way in which Legal Aid is delivered to Aboriginal people. Each should be reviewed in its own right.

The first suggestion, detailed by Native Counselling Services of Alberta, was the establishment of community legal clinics:

> *Legal Aid clinics were proposed in the "Report and Recommendations of the Joint Committee of the Legal Aid Society of Alberta on the future development of the Alberta Legal Aid Programme" that was published by the Legal Aid Society of Alberta in October, 1975. Agencies such as NCSA could be used to meet this criteria for services to the Native community. The Legal Clinic concept could address re-occurring client concerns such as poor access to lawyers that reside outside of the client's community. The clients lack of funds or transportation often hinders the communication process for them and their lawyer. What normally occurs is a last minute conversation between the accused and his lawyer, held in the foyer of the court room, with little understanding of what is to occur by either the client or his counsel. NCSA believes that this is an unacceptable practice that could be alleviated by having the courtworker work with the client and his lawyer. By establishing communication with both parties, the courtworker can provide updated information and minimize last minute difficulties. It has also been our experience that unnecessary delays occur when witnesses fail to attend scheduled trials. This presents two problems for the Native accused, first it incurs lengthy delays that can be both financial and time consuming. In the event that there have been previous delays, the judge may rule to proceed with the trial preventing an adequate defence for the accused. By again involving the courtworker in this process would better insure that unnecessary delays are minimized. Courtworkers have better contact with the Native community and could keep the clients, lawyers and the courts informed of any impending delays.*[56]

Native Counselling Services of Alberta added:

> *That existing NCSA offices be designated as Legal Aid Clinics and established as a method of providing better services to Native clients and Legal Aid lawyers.*[57]

The Legal Aid Society did not see merit in the suggestions of Native Counselling Services of Alberta, and commented:

> *NCSA made a three-part recommendation relating to the establishment of Community Legal Clinics. Although this recommendation relates to a certain extent to accessibility, it is addressed separately because implementation would result in such a dramatic change in the delivery of legal aid services in Alberta. Some legal aid plans operate clinics as part of their overall service, but they are clearly Legal Aid clinics and not clinics operated by other agencies and designated as legal aid offices. Legal Aid questions the value of a contractual agreement between itself and NCSA. Clearly, a greater degree of co-operation between Legal Aid and NCSA would be useful. However, Legal Aid doubts that contracting out some of its services will resolve the existing problems. Of grave concern to Legal Aid would be the loss of control in providing legal aid services and the difficulties of accountability that would inevitably arise in such a situation. Legal Aid has always been and continues to be available to discuss any issues of concern to NCSA. To the extent that NCSA staff have been taking Legal Aid applications in certain remote Northern areas, the recent establishment of Legal Aid day offices in High Level and High Prairie should go far to reduce that burden.*
>
> *Overall, the suggestion of legal aid clinics is a valuable one, not just for Native clients but for all legal aid recipients. The Legal Aid Task Force considered the topic and concluded that a mixed model of service delivery would be appropriate for the Alberta context. It is as a result of the Task Force report that the current pilot project of staff lawyers was commenced. The Board will be evaluating the staff lawyer project after the end of March 1991 before considering further possible changes to the judicare system, which may include the creation of Legal Aid clinics.*[58]

The Task Force did not receive evaluative comments on the Legal Aid Society's staff lawyer pilot project. For this reason, and because we do not have sufficient information on the effectiveness of legal services delivered in this manner, we find it difficult to endorse, at this time, the concepts of Legal Aid staff lawyers or the community legal clinics recommended by Native Counselling Services of Alberta.

The second alternative to Legal Aid for Aboriginals was proposed by the Indigenous Bar Association which would establish an Indigenous Advocacy office. If established, this office would have links with Legal Aid. The Association stated:

> *An Indigenous Advocate's office is recommended to make Indigenous lawyers more accessible to the Indigenous community. The office would maintain a roster of Indigenous lawyers who would be prepared to make themselves available to provide legal and educational services to the Indigenous community. In addition it would have on staff an Indigenous lawyer who could provide knowledgeable referrals and operate a community information program.*
>
> *A) REFERRAL:*
>
> *Indigenous people seeking to be represented by an Indigenous lawyer may obtain the assistance of the Indigenous Advocacy office preferably on a toll-free line. The office would refer callers to participating Indigenous lawyers. Fee arrangements could be as agreed between lawyer and client.*
>
> *B) COMMUNITY EDUCATION:*
>
> *Limited knowledge of the criminal justice system creates fear, distrust and exaggerated responses to the criminal justice system. Education within the community must be initiated to ensure a broader understanding of the law, and the criminal justice system. The Indigenous*

> *Advocate's Office would provide community education in much the same way as legal practitioners deliver education to the non-Indigenous community.*
>
> *C) LEGAL AID SERVICES:*
>
> *Given the small numbers of Indigenous practitioners, they are unlikely to be in communities where the Legal Aid client requires representation. Legal Aid travel reimbursement should be made available for any travel where a referral is through the Indigenous Advocates office.*
>
> *Of great importance is consultation between the Indigenous person and his lawyer. The Legal Aid tariff should therefore provide legal fees on an hourly basis for lawyer-client consultations.*
>
> *Legal Aid assumes that the lawyer is making a contribution by accepting a lower rate of remuneration. Indigenous lawyers who would participate in providing Legal Aid as a result of referrals through the Indigenous Advocacy Office may not be able to afford to devote much time to this work because of the necessity of making a livelihood. The need in this area would likely be high, the Indigenous Bar Association recommends that the Legal Aid "reimbursement" should be revised to provide for higher tariffs or for payment of legal fees on an hourly basis.*
>
> *D) LIAISON WITH INDIGENOUS ARTICLING STUDENTS*
>
> *Indigenous students may seek the assistance of the Indigenous Advocacy Office in providing articles of clerkship and this opportunity should be provided for under the auspices of the Office.*[59]

We cannot ignore that both Native Counselling Services of Alberta and the Indigenous Bar Association offer solutions in which they have a vested interest. Nevertheless, the Task Force finds merit in the suggestion made by the Indigenous Bar Association. The Association acknowledges the short-term problem of insufficient numbers of Aboriginal lawyers to operate an efficient office. The Task Force agrees. We see the possibility of a pilot project with some ultimate long-term goals.

The third suggestion was offered by the Alexander Tribal Government. It involves the long-term goal of developing a Legal Counsel Society. The concept has the potential for links with the Indigenous Advocacy office suggested by the Indigenous Bar Association.

> *Develop a Legal Counsel Society to enable our people to gain access to culturally sensitive legal services, on-reserve, which would deal strictly with problems incurred by our people.*
>
> *Develop our own educational program that teach and inform our members regarding any current changes which occur in all aspects of the justice system. This program would be provided and taught by the Legal Counsel Society.*
>
> *It is our hope that the above concerns and recommendations be given serious thought. It may prove to be a means of decreasing the disproportionate numbers of our Indian brothers and sisters in the correctional institutions.*[60]

The fourth suggestion was made by the Lesser Slave Lake Indian Regional Council. Their Brief outlined a number of reasons for the establishment of a public defenders' system. In their oral presentation to the Task Force, the Council was represented by a lawyer who had, in the past, argued for a public defenders' system in Alberta. Excerpts from the Lesser Slave Lake Indian Regional Council written Brief follow:

> *The Regional Council is convinced that the issues of alcoholism, Native crime and curative treatment will only find proper representation in Her Majesty's Courts if a vigorous public defender system is instituted.*

> *The Regional Council submits that the defence of Indian accused in criminal court is a specialized area, both where the needs and background of the client are concerned, and in respect to the system with which the client is confronted.*
>
> *This means that the LSLIRC is determined to implement a public defender/staff lawyer system. We do not want the assistance of the Legal Aid Society, as its main function is incompatible with the needs of our communities. It is our desire to have a local defence bar that is responsive to our communities, our needs, our constitutional problems and cultural background.*
>
> *To the best of our knowledge, neither the Law Society of Alberta or the Legal Aid Society of Alberta are in favour of the 'public defender' concept. Nonetheless, there are grave and very fundamental concerns over the future existence of Legal Aid. We expect opposition to our proposal, and recognize that the experience of other jurisdictions is both encouraging and daunting.*
>
> *However, this is to our minds the most promising way of serving the Indian community, and preventing the continued erosion of confidence in the justice system by Native people.*
>
> *A Regional Council operated Public Defender system would be cost efficient and could subsume the work now done by Legal Aid and native Counselling Services. A properly constituted Public Defender system for the Regional Council would not require enormous funds.*[61]

The strong position taken by the Lesser Slave Lake Indian Regional Council is encouraging. It is an example of communities who have co-operated in formulating a significant response to current problems with and in the criminal justice system. The Task Force believes that the Council's suggestion deserves recognition. We recommend a co-operative effort which could involve the Legal Aid Society, the Lesser Slave Lake Indian Regional Council, and the Indigenous Bar Association. These organizations would be involved in establishing a public defender/staff lawyer program in the area serviced by the Lesser Slave Lake Indian Regional Council.

The Task Force Recommends:

3.1 That the Legal Aid Society include in its mandate a requirement to educate the Aboriginal people of Alberta about the services offered by the Society.

3.2 That the Legal Aid Society translate into Cree, Blackfoot and Dene Tha', informational pamphlets on services offered by the Society.

3.3 That the Government of Alberta develop standardized signs to be posted in Alberta gaols, penitentiaries and police lock-ups with respect to the availability of Legal Aid, and a method for including and keeping current the names and phones numbers of lawyers funded by Legal Aid.

3.4 That Legal Aid coverage of summary conviction offences be extended, as a necessary affirmative action program, to all accused Aboriginals who are eligible.

3.5 That Legal Aid only take bail money from Aboriginal clients to cover fees when written consent has been received from the person who posted the bail.

3.6 That lawyers funded by Legal Aid who serve Aboriginal clients be required to take cross-cultural training.

3.7 That the final account paid by the Legal Aid Society to the lawyer funded by Legal Aid be provided to Legal Aid recipients, and that recipients be informed that they have the right to review and question the account.

3.8 That Aboriginal communities, the Governments of Alberta and Canada, and the Legal Aid Society work together to consider alternative methods of providing legal service. Examples are: a public defender or hybrid system for areas in the province where significant numbers of Aboriginal people reside.

3.9 That Aboriginal communities work together with the Legal Aid Society, the Governments of Alberta and Canada, and the Indigenous Bar Association to establish a public defender/staff lawyer program to serve the needs of poor Aboriginal people in the Slave Lake district.

3.10 That the Legal Aid Society ensure that there is a culturally sensitive complaint process for Aboriginals who are not able to express themselves effectively in written or spoken English.

3.11 That the Criminal Trial Lawyers Association reassess the importance of adjusting to the changing needs of Aboriginal communities in Alberta who utilize their services through the Legal Aid plan.

3.12 That the Legal Aid Society invite lay Aboriginal community members in preference to Native Counselling Services of Alberta staff to represent Aboriginal concerns on regional committees.

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4.0 The Courts

The Native person is behind the proverbial "8 ball" when it comes to justice being carried, when the whole justice system is located within another man's society and another man's laws and another man's gavel.[1]

Preamble

As the Task Force travelled through Alberta for almost a year to seek information on the criminal justice system, we heard very little criticism of the courts. The false sense could easily have been created that no problems exist with respect to the courts.

Many of the written briefs said little about judges and courts in Alberta. At public hearings, even less was expressed by Indian and Metis presenters, whether for or against the judiciary. This reticence could have been mistaken for total acceptance or even a silent indication of a bill of good health.

The absence of direct criticism of courts is understandable. Direct criticism is not the way of the Aboriginal people. Aboriginals are, by nature, non-confrontational. However, across the country, their mood has changed, as we saw at Oka, Quebec in the summer of 1990 and elsewhere. Today, the mood is one of being 'fed up' with Canadian institutions of government and law. For example, the false conviction and imprisonment of Donald Marshall, Jr. has brought the courts under very close, if guarded, scrutiny by the Aboriginal people.

Expressions of open discontent with the courts in Aboriginal communities in Alberta are rare. A few briefs were received by the Task Force which addressed reasons for this silence. For example, the Federation of Metis Settlements stated clearly:

> *The prevailing attitude present when Judges and Courts were discussed during the meetings and the interviews was one of fear and intimidation.*[2]

Another typical view underscored misunderstanding and alienation:

> *Most of us don't know much about the legal system and aren't informed enough to tell whether or not we are given fair judgement. We have no input or association with the Court system.*[3]

> *Indigenous people have been subjected to the legal system since the time of colonization but have had little opportunity to participate in the*

> *legal system. The imposition of law without social sanction from within the Indigenous community has resulted in alienation from the law, in both the legislative and judicial processes.*[4]

Yet another view characterized the courts as:

> *...a very scary and intimidating place for a Native person to be. Cultural differences, language barriers, poor counselling, very little or no understanding of the system and an almost total lack of support may all contribute negatively to the outcome of the trial.*[5]

These feelings and views are indicative of some deep underlying concerns.

The Task Force did not receive enough information from Aboriginals or from the courts to analyze thoroughly and discover the underlying reasons for the feelings of uneasiness. Clearly, the judiciary is generally unaware and has not attempted to address the concerns of Aboriginals in any meaningful, innovative or enlightened way. The impact of the criminal justice system on the lives of many Aboriginal people has been devastating. There is no escaping the fact that the courts have played a large role in this process.

It is clear that Aboriginal people do not feel that their views are being considered adequately or that these views are applied in Alberta courts. To them, the "white" justice system is partial and unfair. Aboriginal culture is not reflected or appreciated in the "white" system of justice.

Aboriginal people seek justice by wanting the courts to appreciate and respond to their life experiences. To achieve fairness, everyone in the courtroom, from Judges to administrators, must become informed, involved and interested in the Aboriginal world view.

There is ample statistical evidence to suggest that the Canadian criminal justice system is failing Aboriginal people. This failure was most clearly described in one major conclusion reached in the Donald Marshall Inquiry:

> *From all of that, the evidence is once again persuasive and the conclusion inescapable, that Donald Marshall, Jr. was convicted and sent to prison, in part at least, because he was a Native person.*[6]

It would be an error to assume that the participation of more Aboriginal people in the current criminal justice system or the setting up of separate tribal justice systems would provide complete answers. The burden of reform and change must fall on all parties involved. Aboriginals realize that the clock cannot be turned back to the time when they were nomadic family-centred people living in the bush or on the prairies and they are making enormous attempts to adapt to the realities of today. However, they want to do this by retaining as much of their culture as they can. They have, for hundreds of years, willfully rejected assimilation and resisted the efforts of church and state to force them into mainstream Canadian society. We see that resolve continuing.

It is the responsibility of both the dominant Alberta society and the Aboriginal population of Alberta to assist each other in finding the accommodations that will allow Aboriginals, as minorities with distinct cultures, to live in peace and harmony in the larger society.

Aims and Objectives of Courts of Law

Courts are tribunals for resolving disputes. They are established to determine contested rights or claims between or against persons, or to determine their penal liability when charged with offences prosecuted by agents of the Crown.[7]

According to Jerome Frank, the primary function of a Court is:

> *to render specific decisions of specific disputes, in order to bring about their orderly settlement, so as to prevent brawls which might cause social disruption. The Court is thus a peace-preserving device. It stops subversive aggression, keeps the peace, by deciding controversies. It meets crises of maladjustment by peaceable adjustments of conflicts. Just as, in our democracy, we have substituted political elections, peaceful revolutions, for revolutions by force, so we have substituted a sort of judicial or Courtroom duel for private war.*[8]

Associate Chief Judge Murray Sinclair of the Provincial Court of Manitoba remarked on Aboriginal views of the courts of Canada:

> *It is fair to say that aboriginal people generally regard the courts of our country as tools of oppression and not as vehicles of dispute resolution and positive influence.*
>
> *The vast majority of aboriginal contacts with the justice system even today involve appearances in our criminal courts as accused.*[9]

The concept of the court as a "peace preserving device" is quite consistent with the Aboriginal perspective. However, the Task Force was reminded that

> *in any discussion of the [Blood] tribe's traditional justice system that one must not apply a pre-existing Western European intellectual framework, because tribal customs and traditions developed independently and outside of the European cultural and intellectual heritage. Non-Indian academics schooled within the Western European educational system attempting to ascertain the meaning of tribal customs and traditions generally look for characteristics which remind them of a more primitive form of European concepts and institutions, such as, law, property and contract. That is to say, that they are essentially ascribing their own meaning to tribal customs and traditions, instead of perceiving their true nature and meaning from within the tribal context and world view.*[10]

The Blood Tribe's traditional notion of justice was explained to us:

> *Traditional approaches to justice were based upon the principle that every person should be given his due. This involved a reference to the tribal moral standard of the tribe. Acceptable behaviour was ascertained in light of the competing interests of the tribe. However, individual and group interest, if the occasion arose, would be sacrificed in favour of the greater tribal interest as a totality. As a result, social sanctions developed to protect individual interests as well as tribal interests, along with the appropriate machinery to enforce social sanctions. For the Blood Tribe this instrument was the IKUNUHKAHTSI which was called upon to settle disputes, carry out punishments, maintain order and tribal equilibrium, and to guard against and/or expel external aggression. The IKUNUHKAHTSI were normally composed of tribal chiefs or headmen, religious leaders, elders and/or respected warriors.*[11]

In both oral and written presentations, the Task Force was constantly reminded of the irrelevance of the Anglo-European system of justice to many Aboriginal people in Alberta. The Metis use a Cree term, "keum" or "keyam," which, simply put, means "that is okay, let it be that way."[12] Whenever the justice system does something to them, they shrug and say, "keyam."

Perhaps the most powerful reminder came from Mr. Rupert Ross, a Crown Attorney who practises in Kenora, Ontario, when he compared the court system to the historical, traditional Native system:

> *[For the Indians] the function of their dispute resolution was the real resolution of disputes. At the end of their process the disputants would, it was hoped, return to peaceful and co-operative co-existence, their "bad feelings" gone. They expected our courts to accomplish the same when they invited us into their communities. Little did they know that we don't even pretend to that goal. Our society is a society of strangers. Our judicial process doesn't aim at restoring friendship and harmony, for they don't exist in the first place. We aim only at deterring harmful activity. It is little wonder that an elder recently complained that the court doesn't do what it should do, that it only passes sentence, collects fines, takes off and "leaves us with the problem." ... In other words, they expected that our judicial system would accomplish - or at least aim for - the goal they had always felt was paramount. They were willing to put up with the "unethical" requirements of our adversarial process to see that goal attained. They have now come to realize that we don't even aspire to that goal. It is now the judgement of many bands that the price inherent in adopting our process is too great in light of that failure. Many want us to leave, taking our unproductive, perhaps destructive, judicial system with us. More voices join in the call for "self-government."*[13]

Clearly, until alternative systems are developed for Aboriginal people, the courts will have to adapt, evolve, and take into account the respective world views of Aboriginal peoples. Even without alternative systems, the dominant society will always have to adjust and deal with Aboriginal issues because many Aboriginals live in both cultures.

Findings and Recommendations

Term of Reference:

Courts 4(c)

to examine existing levels of community input and assess the feasibility of permitting a greater degree of participation by knowledgeable and respected Indian and Metis people in the sentencing process.

Ownership and Accountability of Courts

In the mid-1970's, when the Honourable Mr. Kirby conducted his study, it was clear that Alberta was going through a transition stage in the delivery of court services throughout the province.

The goal of the changes seems to have been to make the system professional, and to standardize and centralize it. This meant the eventual elimination of lay Judges and the incorporation of a more professional circuit court system. In many cases, the result was the removal of community involvement from the justice system. The Elizabeth Fry Society of Calgary addressed best the debilitating effects the removal of empowerment has on a community as a result of, for example, the establishment of circuit courts.

> *The greatest positive impact one person, society or government can have on another is to empower the other to be responsible for him/herself. Our current Criminal Justice System presents itself as an arbitrary user of power and control in the lives of the community.*

> *This reality becomes even more painful when it is appraised by informed and interested groups within the community: The evaluation is poor. Our system has power; it does not empower.*[14]

Appointments to the Bench were limited to members of the legal profession with at least ten years of practice in good standing at the Bar. The practice of having lay Judges and a panel of lay persons advising a Judge was viewed by the Honourable Mr. Kirby as contrary to government policy. It would be "incompatible with the concept of the equality of all before the law which is fundamental to our system of justice."[15] When he addressed the Task Force, the Honourable Mr. Kirby stated that he had changed his view since he wrote his Report some twelve years ago. He saw room for lay persons to be more active in the criminal justice system. An example would be that of lay persons serving on lay sentencing panels and advising a Judge.[16]

As we state repeatedly in this Report, there are calls for a return to a more community-based delivery of all services within the criminal justice system.

Since the Honourable Mr. Kirby reported, Aboriginal lay persons have been advising judges in courts on sentences. This practice was recently instituted in Alberta by a Provincial Court Judge at Hinton. A similar committee advises the court on sentences of young offenders in Fort Chipewyan. The community and court endorse this practice.

Canadians, in general, hold the criminal justice system in high regard. This is understandable because for many, the system reflects their predominantly European heritage. This statement does not apply to Aboriginals.

> *For them the courts, police, prisons and lawyers represent elements of a foreign system - our "injustice" system. The values represented by basic tenets of the general private and public law are not values to which they adhere. The emphasis on individuals and on personal rights as against the interest of the community is not shared by many aboriginal peoples living in Canada. The legal system is not viewed as a protector of what they hold dear, but, rather as an enforcer of non-aboriginal law upon them.*[17]

Aboriginals do not experience the courts as being accountable to their communities.

> *Judges and Prosecutors must know the people and communities on whose behalf they are acting. They too must be accountable to the people.*
>
> *These comments apply especially to Judges. These people are mere mortals like the rest of us. However, they pass judgement without knowing the circumstances that exist outside the walls of their Courtroom. Too often, offenders are dealt with in too lenient a fashion, released and sent back to the community to taunt and aggravate their victims and create more trouble and hardships for the community.*[18]
>
> *We believe that a means of accountability should be imposed upon the judiciary. It is perhaps through this avenue, the perceptions of justice versus the facts of justice will come to light. We propose to implement a volunteer court monitoring program.*[19]

An underlying message of discontent is that the courts are too detached and not responsive to community needs.

A number of studies and reports by groups, royal commissions and governments, criticize strongly the treatment Aboriginal people have received at the hands of the criminal justice system in general, and the judiciary in particular. Judges, however, do not review and address collectively the effect they have on Aboriginals. It has been stated that Judges do not understand what happens beyond the courtrooms because to maintain "judicial independence," they have been set apart from the communities they serve.

The Task Force frequently asked Aboriginal community leaders and others if they had ever met with a Judge to discuss in general terms how the court dealt with offenders who may have been creating havoc in their communities. The majority had never met a Judge in circumstances other than appearing in court. For most, the Chairman of the Task Force was the first Judge with whom they had ever met. We are of the opinion that criticism of the apparent detachment of Judges is problematic for the Judges themselves. Their legal training with respect to the law has included the principle of their independence. However, some legal scholars believe that Judges carry their separateness too far. As we say elsewhere, there can be no ownership or community involvement without the participation of the actors in the criminal justice system. Community meetings are an effective vehicle for learning about the particular and peculiar circumstances of a given community. We believe that this principle applies to Judges as well.

Donald J. Rosenbloom, a Vancouver lawyer, spoke about this theme to a large group of Judges from across Canada at a Western Judicial Education Workshop held in May of 1990 at Lake Louise, Alberta:

> *The Native and non-Native communities in Canada exist as two solitudes. All the trappings of judicial process and the judiciary's self-imposed arm's length relationship with the community at large even further distances the Native community from the predominantly white judiciary. This magnification of the schism between these solitudes impairs the Court's ability to effectively administer justice to the Native segment of our community and impairs the ability of Native people to understand the judicial process.*
>
> *You know the old saying about not criticizing until one has "walked a mile in the other person's moccasins". Well, the judiciary hasn't done much walking in Native moccasins and, for that matter, the Native community has not had much opportunity to walk in your judicial shoes.*
>
> *And both of you have come out the losers. The Native people have for the most part been denied sensitive and creative methods of disposing of their legal problems. But the losses to the judiciary may not be so obvious. Firstly, without knowing more about the Native culture and having personal contact with their communities, you discharge your judicial responsibilities less effectively than you would otherwise. But more importantly, you are denied the opportunity to learn about the Native cultures on a one-to-one basis through friendships and social activity.*[20]

Mr. Rosenbloom stated he would be interested in a survey to establish how many Judges had actually visited an Indian reserve for reasons other than the court, or how many Judges have actually spent time with Aboriginal people in a social, non-judicial context. The Task Force only conducted an informal survey of the communities we visited. We did not come across any example of Judges in a social, non-judicial context with Aboriginals.

Mr. Rosenbloom continued by admonishing the Judges:

> *When we confront the fact that many of you have spent a significant amount of time dealing with Native-related incidents, isn't it a sad commentary that so few of you have had the*

> *privilege to really know Native people and their cultures.*
>
> *But one might easily respond that the judiciary's general lack of familiarity with Native culture, Native political issues, and Native social problems is not the basis for these depressing statistics [Over-incarceration of Natives].*
>
> *Well, it is my belief that a bench better informed of these issues will be more sensitive to the root problems within the Native communities which in turn will lead to positive results.*[21]

It is clear to the Task Force that the situation has changed substantially since the Honourable Mr. Kirby filed his Report in 1978. The Indian Association of Alberta addressed these changes when it argued for a First Nations Justice System and presented its views on the legal basis for such a system. It is clear that Indian Nations want more than mere accountability; they want to run their own systems of justice.

> *The political growth of First Nations has reached the point where many of our First Nations are now asserting the inherent right to self-determination which was never surrendered or given up in the treaties.*
>
> *Since Justice Kirby presented his report, "Native People in the Administration of Justice in the Provincial Courts of Alberta in 1978" the political, legal and constitutional position of First Nations in Canada has changed dramatically.*
>
> *Our aboriginal and treaty rights are now incorporated into the constitution of Canada in Section 35 of the Constitution Act 1982 which provides:*
>
> *"s. 35(1) The existing aboriginal and treaty rights of aboriginal peoples of Canada are hereby recognized and affirmed."*
>
> *Our legal rights have been recognized by the Supreme Court of Canada, which made several rulings with far-reaching implications. The Supreme Court of Canada rulings provide directions for the federal and provincial governments to recognize, respect and uphold Indian aboriginal and treaty rights. The Supreme Court decisions are a guide for the federal and provincial governments' conduct in dealings with Indian First Nations.*
>
> *The Indian First Nations aboriginal and treaty rights clearly include the right to make rules that govern conduct on our own lands and give us a say in how the laws of Canada affecting First Nations are to be enacted and enforced.*
>
> *Just as Canada follows both common law and statutory law, Indian First Nations have our own traditional law and may also establish our own statutory laws.*
>
> *Federal and provincial governments must stop treating First Nations as subservient and subordinate peoples. We have rights by virtue of our aboriginal heritage and our solemn treaties with Her Majesty the Queen. The federal and provincial governments must recognize these rights and treat us accordingly.*
>
> *We maintain the outside governments cannot unilaterally impose their criminal justice system upon us. As co-signatories to the treaties, we have the right to determine our role and relationship as partners in the treaty agreement.*[22]

If the status quo is maintained, as will be necessary in many areas for some time to come, we believe that Judges will have to start networking with Aboriginal communities to bring down the barriers between the two "solitudes" described by Mr. Rosenbloom. Mr. Rosenbloom has suggested that, as a good start, each judicial district have a Judge or a committee of Judges to promote judicial Aboriginal liaison. We believe such a committee system would be of benefit in Alberta and adopt it as our recommendation.

The Task Force Recommends:

4.1 That the supervising Queen's Bench Justice for every Judicial District in Alberta establish a committee of Judges composed of Queen's Bench Justices and Provincial Court Judge(s) to establish and monitor liaison between the judiciary and Aboriginals.

4.2 That Alberta Judges respond actively to opportunities to attend Aboriginal social and cultural events.

4.3 That Aboriginal communities invite Judges to attend social and cultural events.

4.4 That Judges participate in and provide input into inter-disciplinary committees when Aboriginal issues are discussed.

4.5 That Chief Justices and the Chief Provincial Court Judge establish a channel of communication with leaders of the Indian and Metis Associations.

Lay Courts and Justices of The Peace

Several Indian and Metis communities are seeking their own Aboriginal justice systems. Studies have been undertaken to achieve those ends in Alberta. To many, such systems are part of self-government. We are aware of two Indian Nations which have studied an Indian justice system for their reserves.

The Saddle Lake Band has worked on the issue of tribal justice since 1984, when the Alberta Law Foundation assisted with funding for the development of a model of an Indian justice system for the Saddle Lake Reserve.

The Blood Tribe of the Blackfoot Nation has also developed a model of an Indian justice system specific to its people, customs, and traditions. They hope the model will be adopted on their Reserve eventually.

It should be made clear, however, that there are sceptics within the Indian community. Not all see tribal justice systems as a cure-all.

> *We are of the understanding and the knowledge that the coming thing of the future is the TRIBAL JUSTICE SYSTEM. That, in fact, it is being touted as the answer to the problems we as native peoples face in this society today. It is in keeping with the furtherance of the FEDERAL GOVERNMENT'S plan of assimilation. Now, they want us to become directly responsible for the offenders in our ranks. SELF-DETERMINATION IS OK, AS LONG AS IT DOESN'T LEAD TO SELF-TERMINATION! Somehow, we are of the opinion that this new plan will not bode well for Native people... A TRIBAL JUSTICE SYSTEM costs money. Who is going to guarantee its funding?*
>
> *The concept of a TRIBAL JUSTICE SYSTEM at this point is a scary one. It would take a considerable amount of training and education before the Native community is able to take control of the judicial process in an effective manner. We would like to stress that the lowering of standards to admit Native people to take control of the judicial process is a furthering of the racist doctrine of, "Second-class citizens." That, just because Native people would, in effect, be taking care of their own, that the standards acceptable in the mainstream of society should not be sacrificed in the race to implement this idea. We are of the opinion that the*

> *responsibility of Native offenders that would in effect, be directly maintained by reserves and colonies, is a sound idea, as long as there is a guaranteed funding structure to ensure the high quality of service that has to be an inherent component in such a venture.*[23]

The taking over of criminal justice in Aboriginal communities presents a very real dilemma for some Aboriginals. While there are compelling arguments and a very evident need for the involvement of Aboriginal people, there are Aboriginals who argue that Aboriginal control must not mean that standards are lowered. The Task Force is of the opinion that any standards set could also incorporate other qualifications such as knowledge of culture and language. The possible charge, that to do so will promote racism by keeping Aboriginal people in the position of "second class citizens," must be met squarely.

In addition to being told of tribal justice initiatives toward the development of Indian justice systems, the Task Force received requests for the return to Aboriginal communities of lay courts within the existing system.

The Lesser Slave Lake Indian Regional Council saw an urgent need for Indian Justices of the Peace, particularly in the area of judicial interim release. This would be a step toward the ultimate goal of establishing a Cree tribal justice system.

> *The Regional Council does have one recommendation which we believe would have the greatest impact, and for which we can make the most persuasive arguments. Simply put, the Regional Council wants to have Indian Justices of the Peace. Police would be required to call them when an Indian person is arrested, and Indian people would be able to expect the same consideration that their non-Indian counterparts are perceived to get.*
>
> *The presence of properly trained Indian Justices of the Peace will deter the police from laying unsupportable or even silly charges. This will also encourage police to more often exercise their discretion and release a charged person on a Promise to Appear, without taking them to the police station. It makes the process more accountable and justice more visible to the Native communities. The Indian Justices of the Peace would be appointed by Order-in-Council, and paid like any other Justice of the Peace.*[24]

The Regional Council seeks to establish training programs for appointed Justices of the Peace through the Faculty of Law at the University of Alberta.

When they made their recommendation for the training of Indian Justices of the Peace, the Lesser Slave Lake Indian Regional Council sought the support of the Task Force for this recommendation. We give our full support to the effort. Any move to return justice to the community is a good move in our view. The process initiated by the Lesser Slave Lake Indian Regional Council would achieve that end.

The Regional Council also urged us to examine Section 107 of the Indian Act. This Section provides for two Justices of the Peace having the same authority as a Provincial Court Judge to deal with certain criminal matters. In support of their argument, the Council also pointed to Clause 18.0.9 of the James Bay and Northern Quebec Agreement, which provides:

> *Justices of the Peace, preferably Crees, are appointed in order to deal with infractions to by-laws adopted by Cree local authorities and other offences contemplated in section 107 of the Indian Act. These appointments are subject to the approval of the interested Cree local authority.*[25]

Again, the Task Force is pleased to endorse any move that will bring justice closer to the people. The proposed initiative has a developmental quality. The benefits of training will give the process credibility and lower the chances of failure which have affected other jurisdictions. Proper training should eliminate the fear that Indian Justices of the Peace will be considered "second class." The process will take some time. In our view, working gradually toward the goal will have a better chance of success.

In the community of Fort Chipewyan, the Task Force met a well-organized and interested group of leaders who represented the Cree, Chipewyan, Metis and non-Native populations of this unique community. The Task Force was asked to consider and examine the decentralization of the court. The circuit court, which visits Fort Chipewyan on a fly-in monthly basis (now increased to twice monthly) is not seen as the way to dispense justice in the community. The Task Force was asked to: *"review the magistrate system that was previously used within the community."*[26]

An even stronger plea for the return of lay judges came from the Federation of Metis Settlements:

> *If there were more Native judges, the feeling of being discriminated against because of nationality would be significantly reduced. Native people feel very uncomfortable appearing before judges who know nothing about Native people. To help solve this problem the Alberta Government should bring back the practice of training and hiring lay judges. This program took place in the 1950's and 1960's. Mostly senior police officers were chosen for this program. The program was implemented because of a shortage of qualified judges in the north. The late Judge Bernard Barker is a good example of this. He was a veteran Police Officer who became a judge through this program. He was the judge in the High Prairie and Slave Lake areas for over twenty years. He was highly regarded by his peers and was considered a competent judge by most people.*
>
> *This type of program should be revived as there is certainly a need for these types of judges. Considering the high number of Native people going through the court system a special program should be set up for the training of Native lay judges. This would help reduce the fear and intimidation many Natives go through when appearing in front of a judge.*[27]

The Canadian Human Rights Commission also advocated lay Judges:

> *An area of even lower aboriginal representation is the judiciary, whose impact on Indian and Metis lives through the court system is obvious and profound. In view of the evident difficulty of hiring qualified native judges for the mainstream system in the short or medium term, consideration should be given to training native lay judges for dealing with aboriginal cases. Both Indian and Metis groups have expressed interest in such an initiative.*[28]

The Kirby Report advocated against the involvement of lay persons:

> *The practice of having lay judges in the Provincial Court and the Family and Juvenile Courts is being discontinued in this province as a matter of government policy. Not only would it be contrary to this policy to have a panel of lay persons to advise a judge in his or her deliberations or to have an Indian judge without legal qualifications, it would be incompatible with the concept of the equality of all before the law which is fundamental to our system of justice.*[29]

The Honourable Mr. Kirby reversed his position on lay persons when he appeared before the Task Force. Yet, his previous opinion is reflected in current policy in Alberta. In most of the Indian reserves and Metis Settlements, we heard a general condemnation of the "white" system of justice. Clearly, the Aboriginal people desire more involvement in the system. This is the basis for the request for Indian Justices of the Peace and for a return of the local Magistrate or lay Judge, who would preferably be Aboriginal.

The Kirby Report stated that the appointment of Indian Justices of the Peace would be of assistance, and recommended that:

> *A program involving the training and appointment of Indian Justices of the Peace with limited jurisdiction should be implemented on a trial basis.*[30]

The Task Force has not found any evidence that such an undertaking has had any appreciable effect in improving the conditions of concern to Aboriginals.

We have reviewed the Government's responses to the Kirby Report of 1980 and 1989, and the up-date in 1990. Currently, there are only four Aboriginal Justices of the Peace. Two of these are in Fort Chipewyan. We would be understating the case if we said the program was unsuccessful. The results show that, regardless of the ways in which the government recruited and trained the Justices of the Peace, its efforts to implement the Honourable Mr Kirby's recommendation clearly lack commitment.

It would not be useful for the Task Force to simply repeat the Honourable Mr. Kirby's recommendation. Yet, many Aboriginal people are looking for answers by means of more local control. We offer as a suggestion that government reconsider a system of lay Judges, or initiate a vigorous and effective training program for Indian Justices of the Peace as suggested by the Lesser Slave Lake Indian Regional Council. This would mean that Justices of the Peace are given responsibility for hearing summary conviction cases (not including dual procedure offences) in their communities.

The Alberta Section of the Indigenous Bar Association called for more participation of Elders and lay persons in the criminal justice system:

> *Given the limited number of Indigenous resource personnel with formal training, the criminal justice system must adjust its employment criteria to provide for increased participation of Indigenous lay people, especially Elders. Selection criteria for employment of Indigenous personnel could be based on factors such as familiarity with Indigenous spirituality, customs and traditions, but their roles in the criminal justice system should not be restricted by their lack of formal training.*
>
> *Elders and lay persons, as members of the Indigenous community, appreciate the role of the extended family and understand community standards. Consequently they can be effective, if employed, in assisting a person in resolving problems which may lead to criminal behaviour.*
>
> *In the adjudication of serious crimes, the assistance of respected Elders and lay persons would lend greater legitimacy to the process. Accordingly, efforts should be made to provide for Indigenous people's involvement in the adjudication of serious crimes. This is separate and distinct from the recommendation regarding the appointment of Indigenous judges.*[31]

Again, it is suggested that the criminal justice system adjust its employment criteria. We agree, and add that this must be done carefully so that Aboriginal employees in the criminal justice system are not faced with a label of "second class."

The Indigenous Bar Association further recommended the appointment of indigenous Judges. The Task Force is in full agreement with this recommendation.

> *The appointment of Indigenous Judges would provide for greater participation by Indigenous people in the adjudication process. This is needed to ensure acceptance by the Indigenous community of the premises upon which the criminal justice system is based.*[32]

Such appointments would assist in eliminating the many delays experienced in the current system. At the same time, they would provide for local input into the adjudication phase of criminal justice.

There is a clear need for a full Provincial Court, composed of an Aboriginal Judge, Aboriginal Crown Attorney, Aboriginal defence counsel (included in a roster of choice), and Aboriginal clerks. Such a court should be appointed, on a trial basis, as a circuit court for Northern Alberta. The Task Force envisions an Aboriginal court operating on the many Indian Reserves, Metis Settlements and Aboriginal communities; for example, in the High Prairie, Slave Lake, Wabasca, Demarais, Trout, Loon and Peerless Lakes areas of the province. If successful, the concept could be expanded to other areas of the province. Such a court would be in keeping with one of several approaches proposed by the Indian Association of Alberta:

> *First Nation judges sitting as a special division of the Provincial Court by agreement between First Nations and the Provincial Government.*[33]

The Task Force believes that the incorporation of tribal justice systems on some reserves in Alberta will divert some Aboriginal accused persons away from the mainstream Canadian system. However, we have noted that an estimated 40% of status Indians are living off reserves. This trend, together with the generally increasing Aboriginal population, will only add to the present problems with the criminal justice system. Improvements in education and socio-economic conditions, and alcohol and drug abuse treatment will also reduce the number of Aboriginals coming in conflict with the law. Still, a percentage of the Aboriginal population will have to go through the system of the dominant society. Implementation of Aboriginal circuit courts throughout the province will ensure, in the long-term, that accused Aboriginals will be dealt with in culturally sensitive ways.

The Task Force Recommends:

4.6 That government support the Lesser Slave Lake Indian Regional Council initiative for the training of Indian Justices of the Peace through a certification program, developed in collaboration with the Faculty of Law, University of Alberta, that will apply province-wide.

4.7 That a review of lay Judges and their value in remote areas be undertaken to determine if a program of appointments and training of Aboriginal lay Judges for these areas is warranted.

4.8 That, when Aboriginal lay persons are considered for appointments as Justices of the Peace, they be fully trained and empowered to hear summary conviction offences in the communities in which they live and serve.

4.9 That Justices of the Peace be appointed in the same manner as Provincial Court Judges, with the added input from Indian and Metis Associations and/or communities.

4.10 That the Chief Judge of the Provincial Court be given the power to supervise Aboriginal Justices of the Peace.

4.11 That Aboriginal people be appointed to fill all positions necessary to operate an Aboriginal Provincial Court (Criminal Division) to go on circuit, for example, in the Slave Lake District of Alberta.

4.12 That Aboriginal people be appointed to fill all positions necessary to operate an Aboriginal Provincial Court (Criminal Division) in a large urban centre.

Terms of Reference

Courts 4(a)

to examine the extent to which Indian and Metis people currently experience difficulty when appearing in Court as a result of their unique languages and culture.

Courts 4(f)

to determine to what extent Indian and Metis people appearing in a court are presently provided with interpreters/translators and to determine if there are tangible benefits to permitting Indian and Metis people to using their own language in the courts.

The Task Force heard considerable criticism related to the inability of Aboriginals to understand the Canadian judicial process.

Aboriginal leaders, Elders, inmates, young offenders and all who come into contact with the criminal justice system experience the process of being shunted through arrest, bail hearings, remand, trial, and incarceration as one that is impersonal, bewildering, and confusing.

To many Aboriginals, the criminal justice system is an imposed foreign system of law that is not compatible with their way of life. It has no respect for the Aboriginal world view. As a consequence, the criminal justice system has become – or, we have been told, always has been – irrelevant to many Aboriginals. It is necessary to discuss problems with language in general and legal language or "legalese" in particular, interpreters and translators, culture and the Aboriginal world view, and other issues that lead Aboriginals to experience the criminal justice system as a rather contemptuous and undifferentiated structure.

The Task Force was presented with substantial material which described the cultural differences that exist between the dominant society and Aboriginals. It is in the courts – at hearings to show cause, for plea, sentencing or trial – that Aboriginal people express much of their confusion.

Before addressing specific issues, we want to state that during our visits to provincial courts, we observed that most Judges exhibited patience, understanding and compassion for the Aboriginals in their courts. On the other hand, we also observed Judges who had little time or patience for anyone going through their courts regardless of race. However, on the whole, the Alberta provincial court Judges we met were understanding, even though they represented the dominant society's world view. Judges receive little cross-cultural education. This explains why they treat Aboriginal people in their courts inappropriately despite their good intentions. We realize that the courts are bound to apply the law as it is given to them. This, indeed, is what the courts do.

Culture, Language, Translation and Interpreters

The issues of culture and language were addressed in the Brief from the National Aboriginal Communications Society:

> *The criminal justice system, and the whole judicial process, does not recognize Aboriginal people, or Aboriginal cultures, or Aboriginal languages, as can be attested to by the alarming numbers of Aboriginal peoples in prison today.*[34]

> *We have long ago determined, as Aboriginal people, that our culture, and our languages, are one and the same. Language is culture, culture is language. And we have also steadfastly clung to the idea and the truth, that Aboriginal culture is different than that of any other culture in this country, and on the face of the earth.*[35]

> *Cultural conflicts exist in the fact that many of your most basic legal concepts like probation, guilty, not guilty, innocence, beyond reasonable doubt, lawyer, judge, civil rights, civil proceedings, court, contract, legal advice, show cause, court reporter, criminal code, highway traffic, summary conviction, jury of one's peers, indictment, plea, bail, and charter of rights, have no equivalent words in any of the Aboriginal languages. The concepts behind the English words are absent as concepts in Aboriginal thinking.*[36]

Representatives from all of the established eight Aboriginal language groups in Alberta commented on the inability of Aboriginals to translate certain English words and concepts, particularly legal ones. Mr. Roy Louis, formerly the President of the Indian Association of Alberta, spoke about this problem when he appeared before the Task Force. The National Aboriginal Communications Society Brief comments further:

> *Aboriginal people have not assimilated. Their identity as separate people, with a vision of reality and destiny, and of themselves and their world, remain an essential feature of their lives.*[37]

> *It's easy to assume that our children are committing suicide at an alarming rate because of drugs, and alcohol. It is also easy to assume that the unemployment rates and socio-economic conditions of our people are horrendous, because our people are lazy. But ladies and gentlemen, I hope and I pray, that you will believe me when I tell you the solution to these and other problems faced by our people today, is simply understanding. You have to understand that these problems are a direct result of this society's failure to recognize and respect the fact that Aboriginal people and cultures are and will remain different and distinct from any other*

> *culture, not only in Alberta, not only in this country, but in this world. And until such time as society recognizes and respects those differences, Aboriginal people are condemned to a life of poverty, imprisonment, unemployment, and perpetual dependence for their survival on a non-caring society.*[38]

These comments raise the question of whether a seemingly non-caring criminal justice system will be able to muster the recognition and respect Aboriginals state they require.

Many other submissions gave us special insights into the problems of language:

> *Sometimes, if parents are concerned and want to help, they can't. Many parents understand only the Dene Tha language and the whole court is in legal jargon so they are unable to provide support when they do not know what is happening.*[39]

> *Skilled translation is needed to make the entire court proceedings well understood to all present, and in both Cree and English languages. The Neeyanan Association should be consulted, as we could arrange for a translator to be available to the court whenever needed.*[40]

> *It is often difficult for people to understand how the criminal justice system works, given the cultural and language differences. More educational efforts must be made. This effort could be made through such agencies as Native Counselling Services with workshops and regularly scheduled visits to the Settlement. These services should be available in Cree.*[41]

> *Some members of the courts suffer from what we perceive as, "cultural blindness." They are unable to see and hear accurately the Indian victims, the accused, and the witnesses who appear before them. We must then ask the question, "Is the decision of the judge rooted in reality?" If not, then our members have had great injustices committed against them, ironically by people who represent the law.*[42]

> *How are we to know about laws of a foreign system if they are not interpreted for us in our own language?*[43]

> *A great number of Natives are unfamiliar with the "court language" and legal process. We see an interpreter as being a valuable asset not only to the offender, but the court as well.*[44]

> *Our people do not understand the judicial system. The whole court proceeding is an alien process, therefore the judgement is not fully comprehended by the client. An enormous problem is the language barrier. English is a second language in our communities, it is very difficult to translate legalese into a traditional language.*[45]

> *Most people do not understand what is being said in court. How does one interpret a fundamental concept like guilty/not guilty when the concept does not even exist in the Dene Tha' language? How can the fundamental concept of "justice" be understood and the police be seen as standing for justice when their name in the Dene Tha' language is "Dene Kuelehi", which means: "those who put people in jail" and the Judge is "Dene Kuelehiti", which means, "he is the big boss of those who put people in jail!".*[46]

> *Language is not only an issue for natives who do not speak English. The language of the Criminal Justice System is foreign to most Native Canadians. "The Judge said something to me. He used many big words. Then he asked me if I understood. I said no. He said some more things that I did not understand. He asked me again if I understood. This made me feel stupid. Though I did not understand I said yes. I knew I would never understand." This story is typical of the experience of young native people when they appear in court.*[47]

The Task Force received some very clear examples of concrete problems from a lawyer of the Indigenous Bar Association. His comments on interpreters in court were revealing:

> *Generally, older Indian people are quite eloquent in their own language. However, when they speak English, their speech is quite limited. This cannot but help to be a factor in assessing credibility. The Indian witness with his or her broken English is frequently pitted against a professional police witness who is familiar with court procedure and who understands what is needed to achieve a conviction.*
>
> *When interpreters are called to assist the process, the present court interpretation system fails. First of all, if the Indian can speak some English, the tendency is for the Judge to say he understands English well enough. The Indian is left with his less than perfect grasp of the English language to present his story and have his credibility assessed against professional witnesses.*
>
> *On one occasion, I had arranged for a Native interpreter from the community for an elderly Indian client. The interpreter who was regarded as a very good interpreter by Indians because of his fluency and his helpfulness to people he translated for but he was not trained in formal court room interpreting and the necessity of presenting the appearance of a neutral translation for the Court. His interpretation was dismissed when he tried to do his task in Indian fashion. From my knowledge of the facts he did not misinform the court but his "word count" differed from the Indian elder and his interpretation was dismissed. The elderly Native on trial was left with his imperfect English to present his defence.*
>
> *On another occasion, mindful of my previous experience, I advised the Court that the services of a Native interpreter would be necessary. In due course an interpreter was found by the Clerk of the Court. Upon receiving the consent of the Clerk of the Court and the Crown, I interviewed the Court appointed Native interpreter to assess her interpreting skills. I discovered that she was a first cousin and a close neighbour of the accused, that she had never received any training in interpreting, and that she had never interpreted in Court before. The court room interpretation was spectacularly unsuccessful.*[48]

There is no doubt that language plays a central and crucial role in enabling people to understand what goes on in Court. It is clear that language problems prevent Aboriginals from having such understanding.

The Sik-ooh-kotoki Friendship Centre commented on misunderstanding:

> *The interpretation of the laws of today and the process and system of how these laws are applied, remains to be misunderstood by the majority of the native people and the rationale behind some of the present laws. The native people through the colonial government applications, the forced doctrinations of the boarding schools and the treatment of the Royal Canadian Mounted Police have not accepted the laws of today and have more mistrust for the laws and the people who represent the legal systems.*[49]

A Justice of the Court of Queen's Bench made the following comments about a personal court experience. This, in our view, clearly describes the problem of language and supports the concerns expressed by Aboriginals with respect to the need for interpreters. She followed with a recommendation which we have adopted:

> *Interpreters - Many years ago, I had an unfortunate experience in Fort McMurray, which I still vividly recall. A Native, accused of a serious sexual assault, obviously had an inadequate command of English to understand the proceedings. An interpreter had been obtained for him. Nonetheless, no standardized trial interpretation techniques had been developed to ensure that the accused was reasonably "present" at his trial. I wrote of my concerns at that time; I hope that the situation with respect to interpreters has been improved.*[50]

Judging from Aboriginal presentations to the Task Force, there is little evidence of improvement in Alberta courts with respect to interpreters.

It may be instructive to note and examine the responses of the Attorney General's Department to a number of questions regarding interpreters raised by the Task Force at the beginning of its mandate:

> ***Task Force:***
> *The availability of interpreter services at prosecutorial interviews, including: qualification of interpreters; location of services; availability of services.*
>
> ***Response:***
> *Prosecutors in our system do not interview all witnesses. They often rely upon police statements to give them information about what witnesses will say. If a witness who speaks a language other than English is being interviewed, so as to make the services of an interpreter required, we would normally rely upon the interpreter used by the Courts.*
>
> *Court Services has a provincial inventory of interpreters which is revived as the needs are identified.*
>
> ***Task Force:***
> *What interpreter services are available to Justices of the Peace:*
>
> ***Response:***
> *The Justices of the Peace have, or have access to, a list of competent language interpreters who are available on a need basis.*
>
> ***Task Force:***
> *Details on interpreter services for clerks of the Court (outside of the Court sitting).*
>
> ***Response:***
> *Where interpreter services are required immediately at the counter, an attempt to locate someone within the office/building is made. Also, each Court location has a list of competent language interpreters who are available on a need basis.*
>
> *Native counsellors are available in some locations and they may provide the service if the need arises.*
>
> ***Task Force:***
> *Details on interpreter services for the Court of Queen's Bench.*
>
> ***Response:***
> *For the Edmonton and Calgary Court of Queen's Bench, the Witness Central Unit provides all language court interpreters. Outside Edmonton and Calgary, the Court offices have a list of competent interpreters who are available on a need basis, or they may use the original interpreter that appeared at the Provincial Court level, or they may have the Witness Central Unit in Edmonton or Calgary obtain an interpreter.*
>
> ***Task Force:***
> *Details on the availability of interpreter services for non-represented accused, in the Court of Appeal.*
>
> ***Response:***
> *The Witness Central Unit provides the service. They have a list of competent language interpreters available on a need basis.*[51]

Clearly, the system of interpretation in Alberta largely operates on an ad hoc basis. The farther removed one is from Edmonton or Calgary, the more problems one can expect to experience with interpretation.

A recent decision in a British Columbia Court is a further illustration of the language problem faced in court by Aboriginals. On November 20, 1990 the *Vancouver Sun* reported:

> *Lil'wat Indians cited for criminal contempt for blockading the Duffey Lake Road at Mount Currie are entitled to hear legal proceedings in their native language, the B.C. Supreme Court ruled Monday. However, Justice Bruce Macdonald, saying he personally doubted the need for such a service, ruled it was the responsibility of defence counsel, not the court, to provide qualified translators.*

> *'I have attempted as best I could to accommodate your requests,' Justice Macdonald told defence counsel Lyn Crompton and Bruce Clark. 'I don't feel full interpretation is necessary for these people to understand the proceedings.'*[52]

Assuming that the quote attributed to Justice Macdonald is correct, his opinion demonstrates a disturbing view of the requirement that the Lil'wat Indians receive service in their own language. The Justice doubted the need and moreover imposed on the Aboriginals the costs of providing their own qualified translators. We wonder where this decision leaves the right to an interpreter as set out in Section 14 of the Charter of Rights and Freedoms which provides:

> *A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.*[53]

We recognize that Justice Macdonald has interpreted the Charter as setting out the right to interpretation without specifying who pays for it. In this case, the Justice ruled that the defence must pay. The Task Force believes that Aboriginal persons appearing in court have the right to use their own language. It is the Court and not the Indians or Metis who require the translation. Yet, the Court has held Aboriginals responsible for obtaining translators.

As has been demonstrated repeatedly in Aboriginal presentations to the Task Force, many Aboriginals who are incarcerated go through the criminal justice system without comprehending what is happening to them. The cause of understanding would be advanced in mainstream courts of law if Aboriginal accused persons were able to confront the justice system in their own language, in courts which showed an understanding of the Aboriginal cultural predicament and of the cultural differences between Aboriginals and the dominant society.

Of the Indian Bands we visited in the province, the Dene Tha' Band of Assumption stood out as one which had maintained its unique language and culture. The Dene Tha' was one of the last Indian tribes in Alberta to be affected by advancing white society. Many of the Band's Elders do not speak English. When some Task Force members met with Chief Chonkolay in his home, he spoke to us in his own language. His wife assisted by providing interpretation. The Chief also used his own language when he made an oral presentation to the Task Force and was assisted with interpretation by a Councillor from Meander River.

Many Indian tribes are returning to their language and cultural roots. If our legal institutions do not adapt to this trend, we will simply alienate Aboriginals further. The current gulf between the cultures will be widened. Not surprisingly then, the Dene Tha' offered a specific recommendation to improve conditions in the courts for their communities which they linked to what is happening in the Northwest Territories where they are more closely associated tribally with their brothers and sisters who reside there.

The Task Force Recommends:

4.13 That interpretation and translation services for criminal court be provided at public expense to all Aboriginals for whom English is a second language and who require assistance.

4.14 That the Government of Alberta together with the Aboriginal community develop interpreting and translation courses for the

main Aboriginal language groups in the province, and find uniform ways for the interpretation of legal concepts in the Aboriginal languages.

4.15 **That the right of Aboriginal people to be heard in their first language be recognized. Translation and interpretive services exist for the benefit of the court and should be paid for at public expense.**

Term of Reference:

Courts (4d)

to assess the desirability and the extent to which Court sittings should be routinely and/or selectively held in identifiable Indian and Metis communities.

Access to Court Sittings

Provision of service from all components of the criminal justice system is seriously hampered and impaired by the remote locations of many Aboriginal communities in Alberta. The manner in which justice is delivered to these communities is usually viewed as serving the convenience of the Judges and lawyers who occupy the most powerful and influential positions in the criminal justice system, while the people to be served by the system are inconvenienced.

Accessibility to the court system in remote Aboriginal communities was presented as the greatest problem, and as evidence of the system serving itself rather than the people. We were told that Judges, lawyers, and courtworkers rush in and out of the communities on circuit, always conscious of their drive or flight back to their home bases. As a consequence, people are rushed through the process or their cases are continually delayed for reasons that are only apparent to the court parties who visit them. Weather conditions are often the cause of a postponement of proceedings. In some communities, this means that monthly sittings become bi-monthly sittings as the missed date is not generally re-scheduled. Dockets build up, which simply results in more delays. Meanwhile, the Aboriginal concept of healing and forgiveness has already been applied and makes the delayed court appearance redundant.

The dilemma of delayed justice, experienced by Aboriginal communities, was expressed clearly by the Alberta Association of Social Workers:

> *Initial response to crime in a Native community may be swift with the immediate laying of charges. Particularly in remote regions serviced by Circuit Court operations, there may follow a delay of weeks or months before a trial is possible to determine whether the circumstances actually allow for entry into the Criminal Justice System. Sentencing may create another lengthy delay. During all of this time, the community has to reach some accommodation with both the offender and the victim, and deal with the emotions involved such as shame and anger. The time delays necessary to exercise all the features of the Criminal Justice System in the community may well disrupt that community's long-established natural processes of hurting and healing. Obviously, this problem is not unique to Native communities but is likely more pronounced in remote Native settlements.*[54]

Judges of the Provincial Court are appointed by the Lieutenant Governor in Council. In addition to the Chief Judge and eight Assistant Chief Judges, there are one hundred permanent Judges of the Provincial Court, and one supernumerary judge.[55]

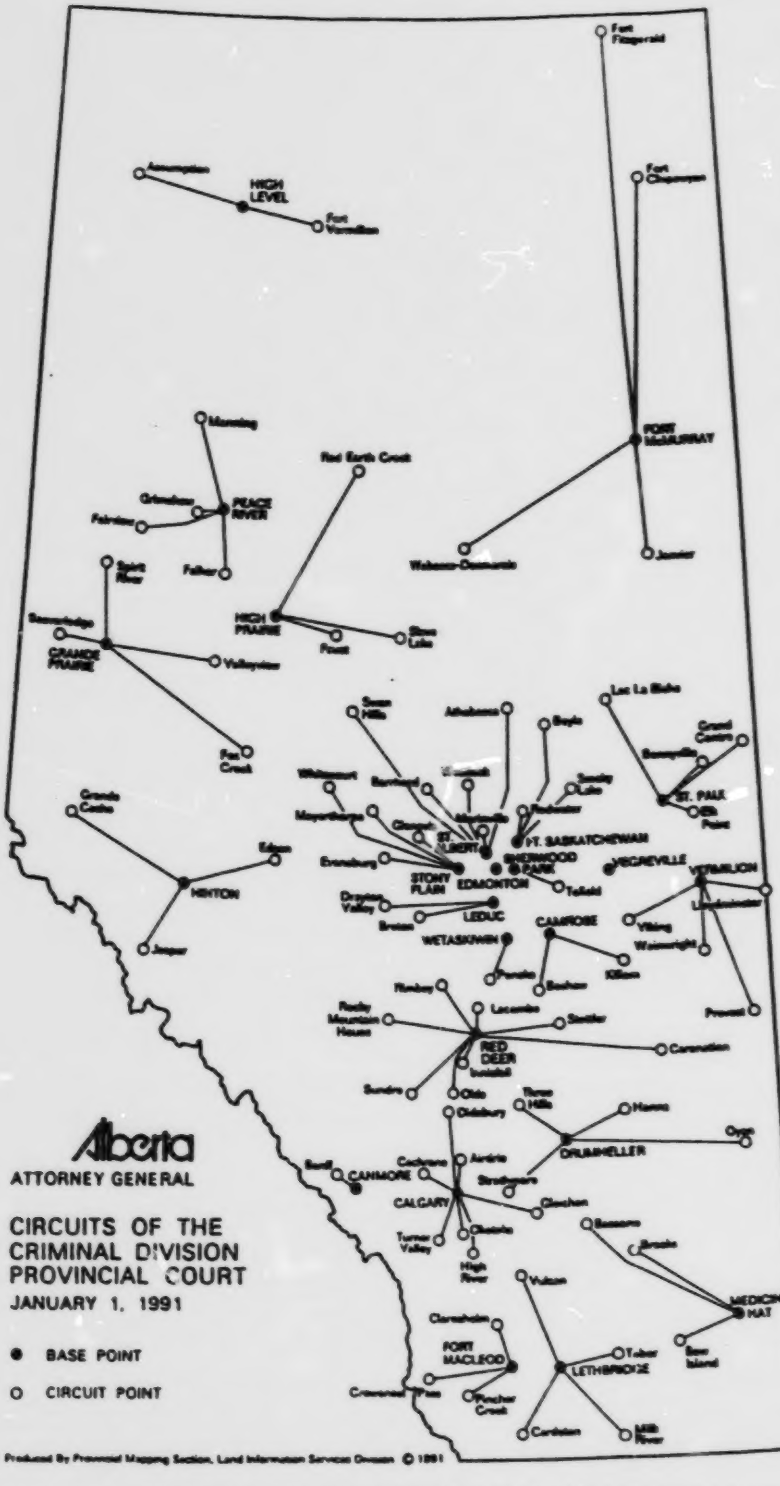
The Provincial Court may sit at any location in the province for the orderly dispatch of the business of the Court. At the present time, there are 24 permanent and 76 circuit locations in which the Criminal Division of the Provincial Court sits (see map, on page 21). The Family and Youth Divisions of the Provincial Court sit in 24 permanent and 63 circuit locations. The Civil Division sits at most of the locations used by the Criminal Division.[56]

The Task Force did not receive presentations from the Court of Queen's Bench and the Court of Appeal. However, we know that these Courts sit in major centres (see map on page 22). In addition, the Court of Queen's Bench sits in Peace River to serve the remote communities in the far northwest of Alberta, and in Fort McMurray to serve the northeastern part of the province. Accused persons who are not in custody and witnesses who must make their way to these locations to attend, do so at great personal inconvenience and expense. This situation clearly raises the question of who is to be served by the courts.

A judge in Fort McMurray stated:

> *We have recently (two years ago) extended our sittings to Janvier in an effort to take the Court to the people. I feel strongly that the Courts should sit in the settlements and have accepted some very poor accommodations in order to accomplish this. There is one place, Chipewyan Lakes, which is not served and provides almost insuperable problems for persons charged with offences there. It is only accessible by air and has no place in which Court could be held. My personal opinion is that all criminal matters should be tried in the place they occur, including High Court Trials. There are enough elements estranging the Native communities from the justice system without adding the factor of removing people from their communities into the mysteries of the system from which they rarely return. For the community, Justice is rarely seen to be done in serious cases. I think we are far too worried about robes and formalities and surroundings to the detriment of the people and their needs and understanding.*[57]

Several Provincial Court Judges met with the Task Force. When asked for their comments on the desirability of Courts sitting on Indian reserves, some made the following comments:


Fort Fitzgerald
Assumption
HIGH LEVEL
Fort Vermilion
Fort Chipewyan
Manning
FORT McMURRAY
Red Earth Creek
Grimshaw
PEACE RIVER
Fairview
Falher
Wabasca-Desmarais
Janvier
Spirit River
Beaverlodge
HIGH PRAIRIE
Faust
Slave Lake
GRANDE PRAIRIE
Valleyview
Fox Creek
Swan Hills
Athabasca
Boyle
Lac La Biche
Grand Centre
Bonnyville
ST. PAUL
Elk Point
Whitecourt
Barrhead
Westlock
Smoky Lake
Redwater
Mayerthorpe
Clyde
Morinville
ST. ALBERT
FT. SASKATCHEWAN
SHERWOOD PARK
VEGREVILLE
VERMILION
Grande Cache
Edson
Entwistle
STONY PLAIN
EDMONTON
Tofield
HINTON
Drayton Valley
Breton
LEDUC
Lloydminster
Viking
Wainwright
CAMROSE
WETASKIWIN
Killam
Jasper
Ponoka
Bashaw
Rimbey
Lacombe
Provost
Rocky Mountain House
Stettler
RED DEER
Coronation
Innisfail
Sundre
Olds
Three Hills
Hanna
Didsbury
Oyen
DRUMHELLER
Cochrane
Airdrie
Banff
CANMORE
Strathmore
CALGARY
Gleichen
Turner Valley
Okotoks
Bassano
Brooks
High River
Vulcan
MEDICINE HAT
Claresholm
FORT MACLEOD
Taber
LETHBRIDGE
Bow Island
Crowsnest Pass
Pincher Creek
Cardston
Milk River
Alberta
ATTORNEY GENERAL
● BASE POINT
○ CIRCUIT POINT

CIRCUITS OF THE
CRIMINAL DIVISION
PROVINCIAL COURT
JANUARY 1, 1991

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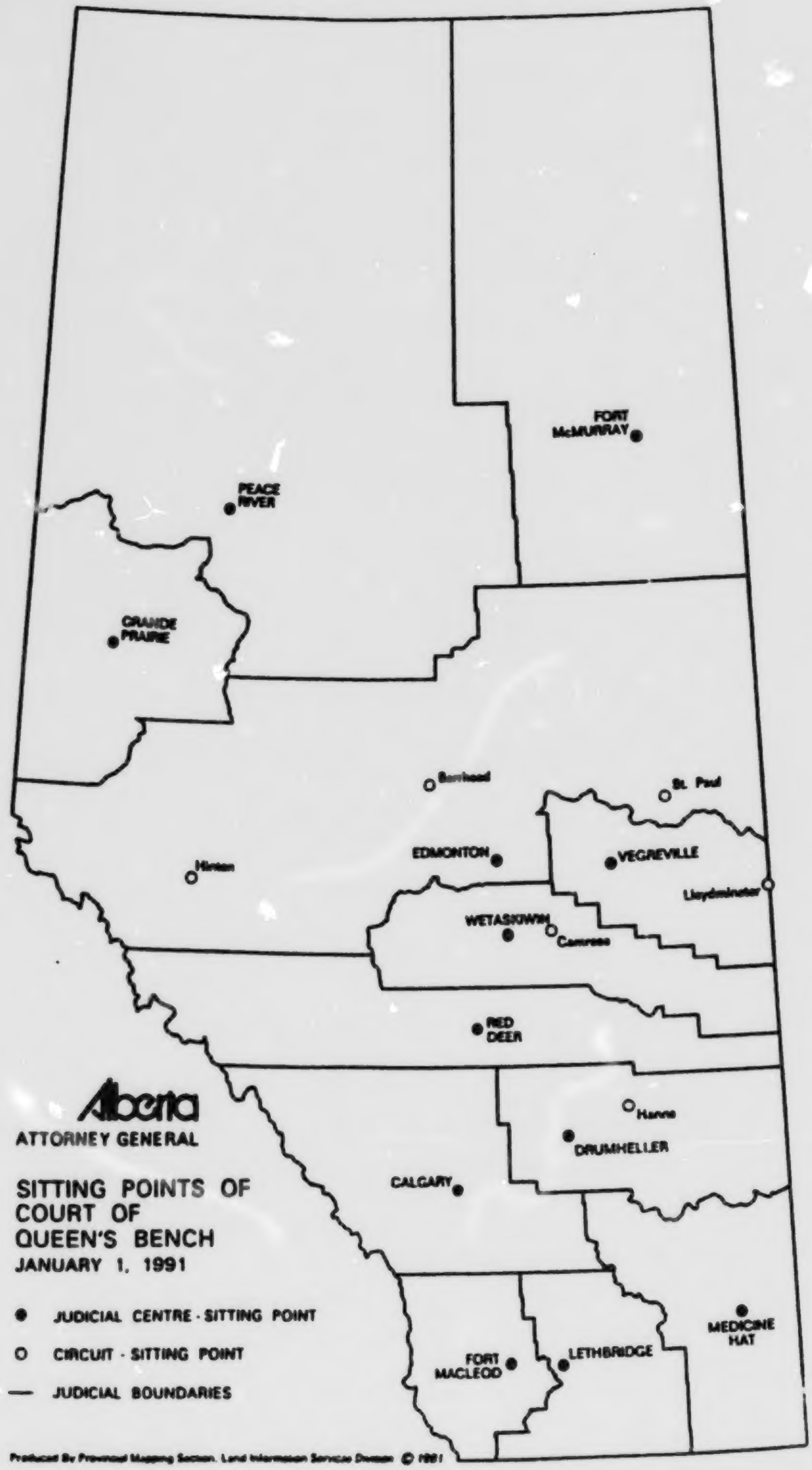

Alberta
ATTORNEY GENERAL

SITTING POINTS OF
COURT OF
QUEEN'S BENCH
JANUARY 1, 1991

● JUDICIAL CENTRE · SITTING POINT
○ CIRCUIT · SITTING POINT
— JUDICIAL BOUNDARIES
FORT McMURRAY
PEACE RIVER
GRANDE PRAIRIE
Barrhead
St. Paul
Hinton
EDMONTON
VEGREVILLE
Lloydminster
WETASKIWIN
Camrose
RED DEER
Hanna
DRUMHELLER
CALGARY
MEDICINE HAT
FORT MACLEOD
LETHBRIDGE

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> *Only if necessary [because of] political problems - Band power politics.*
>
> *Mixed emotions if Courts routinely held on Reserves [it] would be more of a feeling of being a part of the community.*
>
> *Courts of all nature should appear in the community.*
>
> *Shame for a serious transgression is a start, Natives feel it more acutely. Offences should be tried where offences occur.*
>
> *Natives will have a sense of ownership.*[58]

It has been stated that the provincial courts hear approximately 93%[59] of the criminal cases in Alberta. Most of these cases would be heard at the 24 permanent and 76 circuit locations in the province. Very few cases are heard on Indian reserves and in Metis settlements.

> *To my knowledge there are Provincial Court sittings in three Indian communities as well as two larger Native Centres, the latter being Desmarais and Fort Chipewyan.*[60]

Many Indian leaders have stated that they would welcome court sittings on their reserves. At the same time, we emphasize that several were not in favour of this suggestion.

The Tallcree Band recommended:

> *Bring the Courts to the Native communities.*[61]

The opinion of the people of Peerless Lake was presented by the Neeyanan Association. Peerless Lake residents said about their trials and tribulations of attending court:

> *For the common incidents, people of the Settlement who must attend Court do so in Red Earth, 78 kms. from Peerless Lake. The Judge comes into Red Earth on Court date (from a larger community) as must the lawyers, etc. When weather and road conditions are especially poor, Court is often cancelled and postponed to a later date. On such occasions the people of Peerless Lake have driven over hazardous road conditions and have had to arrange for babysitters, leaving family and duties at home. That represents considerable hardship and risk ... we strongly suggest that Court be decentralized - preferably to be held in each community, in order to increase peoples knowledge and awareness.*[62]

The Alexander Tribal Government presented a somewhat different problem with attending court in Morinville, a neighbouring community.

> *Currently we have developed a stigma which is created by our members who attend Court in Morinville. This stigma only adds to the already existing stereotype held by some townspeople toward the [Indian] community. It then seems appropriate to hold Court in an alternate location, perhaps in St. Albert, Stony Plain, or in our own community. This will help erase the stigma surrounding our community and begin to build a positive character for our people.*[63]

We understand that court sittings took place at Hobbema some years ago. They were discontinued at the request of the Four Bands after several complaints about the stigma Band members experienced when they had to appear in court before their own community members.

Judge N.A. Rolf, of the Provincial Court in Wetaskiwin, said in his written presentation to the Task Force:

> *In an initial meeting in October, 1989, at the Four Bands Office in Hobbema, with a few interested people, I asked, "When are you going to ask that Court be held in Hobbema?" In the meeting of November 1, 1989, some of those asked that Court be held in Hobbema.*[64]

Judge Rolf attached to his letter the minutes of a meeting held with Hobbema residents in Wetaskiwin. The minutes show:

> *Members of the group requested the Provincial Court be located at Hobbema to which Judge Rolf responded that eventually it is hoped it will be located there. Another group member responded that the ground work has already been completed in terms of the Attorney General's Department being supportive. At this point in time the support of the Four Bands Chiefs and Council is needed.*[65]

During the hearings, the Task Force asked the Indian Association of Alberta about some of the problems with courts sitting on reserves. We heard that "creature comforts" exist in many communities adjacent to reserves. The comment implied that the courts are unwilling to venture into areas which do not offer all the trappings and comforts of regular courtrooms. Secondly, we heard that Indian people are often ashamed to appear on criminal matters in their home communities. Thirdly, the name "Provincial Court" was distasteful to many Indians who feel that the total responsibility for Indians under the Constitution lies with the federal government; giving any recognition to the Province meant going backward. Fourth, local municipal governments were seen as a hindrance. These governments were seen as wanting to use court houses to build up the town. It was also felt that municipal governments would not want to give up any "business" to the neighbouring Indian community even though Indians provide the court with the largest share of its "business."

The Kirby Board of Review (1978) recommended that in Alberta:

> *Where practicable, Provincial, Family and Juvenile Court sittings should be held on Indian Reserves when those Reserves are not easily accessible to centres in which sittings are held.*[66]

In 1980, the Government of Alberta responded:

> *The current practice of selecting circuit points takes into account general population distribution, including Indian Reserves, so as to minimize the distance from place of residence to the location of Court sittings. As well, discussion on the feasibility of Court sittings on isolated Indian Reserves will be entered into with any interested Band Council.*[67]

In 1989, prior to the commencement of this Task Force, the Government of Alberta up-dated the information on its response to the Kirby Report. Information on court sittings in Aboriginal communities was as follows:

> *The isolated Native communities currently being served by circuit court sittings are Assumption, Fort Chipewyan, Wabasca, Red Earth Creek and Janvier. In addition, there are a number of northern, central and southern communities that are serviced by circuit courts where a substantial Native population exists or resides near by such as: Faust, Slave Lake, Grande Cache, Lac la Biche, Elk Point, Boyle, Edson, Glenevis, Rocky Mountain House, Pincher Creek, Gleichen, Taber and Cardston. At present discussions are being held with the Hobbema Indian Reserve for possible court sittings in the future.*[68]

It should be noted that Red Earth Creek is not a "Native" community. It fits more appropriately in the group of communities "which has a substantial Native population near by."

The up-date shows that, over the twelve year period since the Kirby Report, the Government of Alberta has made provincial court sittings available to four

Aboriginal communities, and has opened courts at circuit points in several communities close to areas where a substantial Aboriginal population resides.

The Indian Association of Alberta made the following comments about court sittings:

> *Regarding Courts, Kirby recommended holding Provincial, Family and Juvenile Courts sittings on Indian Reserves.... The response states Indian Reserves are taken into account when selecting courts' circuit and that the Provincial Government would discuss with any interested Band the feasibility of court sittings in isolated reserves.*
>
> *We must comment that rarely have there been discussions initiated which held out the prospect of genuine opportunity to hold Court sittings on Indian reserves. Only in three instances, Alexis, Assumption and Janvier, are Courts being held on Indian Reserves. In the great majority of instances, the Indian people have to go to the court held in the neighbouring non-Native community. Today, First Nations, more than ever, want to see Indian courts in their communities.*[69]

The Indian Association of Alberta differs with the Province on the number of Indian reserves currently served. This may be because the Province has characterized the sitting as being located in "Native Communities" rather than using the more specific term "Indian Reserves".

Despite this difference in numbers, the courts sit in precious few Indian reserves, and to our knowledge, does not sit at all in Metis settlements.

We are not certain what the Indian Association of Alberta meant when it said that "First Nations, more than ever, want to see Indian courts in their communities." Taken at face value, the statement would seem to refer to tribal courts. However, since it was made in the context of a discussion on provincial court sittings recommended by Mr. Kirby, we have concluded that it may refer to Provincial Court as well.

In any case, Aboriginal people experience a number of hardships in getting to court.

Our review and assessment of this issue has led us to the conclusion that several Aboriginal communities still need to be served by provincial criminal, family and youth courts. Negotiations have to take place with Indian reserves to get their agreement on court sittings in their communities rather than in near-by towns.

With respect to Court of Queen's Bench sittings in remote areas, we must consider more practical reasons than mere "creature comforts." Whenever jury trials are to be held, the facilities must be available to accommodate these special circumstances. However, not all cases proceed to jury trials. Where an election is made for a trial before a Court of Queen's Bench Justice sitting alone, there is no particular reason for the court not to sit where Provincial Court Judges sit.

The Dene Tha' people of Assumption recommended:

> *That a Court of Queen's Bench be established in High Level where it will be more possible for parents to support family members who appear in front of the Court.*[70]

The Task Force considers this a valid argument and recognizes that there are many other reasons to be considered. Several reasons for bringing the courts closer to Aboriginal people have been mentioned earlier.

The Task Force Recommends:

4.16 That regular sittings of the Court of Queen's Bench be held in High Level.

4.17 That all court sittings be held closer to Aboriginal communities.

4.18 That all court sittings be reviewed and located on Indian Reserves, and in Metis Settlements and Metis communities throughout the province, with the concurrence of the community.

4.19 That, when elections are made for a Court of Queen's Bench Judge to sit alone, the Court sit wherever a circuit provincial court would sit.

4.20 That all courts sit at any Aboriginal community in the province at the request of the parties and the community.

Transportation

During the hearings at remote Aboriginal communities, we were frequently told of the difficulties encountered by residents in getting to court hearings at various circuit points in the province.

> *In isolated communities there are often transportation problems to appear in Court. This can result in a "failing to appear" charge. These extenuating circumstances must be considered.*[71]

> *Within isolated communities, a witness who is subpoenaed to a Court case, at times, cannot afford the travel costs. For example, the Court will pay .08 cents/mile, however, this does not adequately cover the actual costs. This is unfair in that if you are subpoenaed, then you have no choice; "you must" attend Court. For example, it costs $120.00 one way in a taxi cab fare from Cadotte Lake to Peace River. Further, the current reimbursement system and also receipts are expected to take five weeks.*[72]

A frequent consequence of these problems is non-compliance with the Young Offender Act and the Charter of Rights and Freedoms.

We are aware that accused persons in remote communities must make their own way to a circuit court point. For fly-in communities such as Fox Lake and Chipewyan Lake, the costs for an accused person to attend court are prohibitive. This generally results in their non-appearance and the issuing of a warrant. The reasonable solution is to take the court to the people. This is done in the Northwest Territories. Alberta should do no less.

It should also be noted that offences against the administration of justice, such as "failure to appear", are 7% higher for Aboriginals than for non-Aboriginals.[73] Clearly, a large number of these offences can be attributed to transportation problems in getting to distant circuit courts.

Bringing the courts closer to the people will help to correct this problem.

The Task Force Recommends:

4.21 That the Government of Alberta review the process of court attendance of Aboriginal accused persons, witnesses and jurors, and that allowable expenses to get to court be increased, or transportation be made available.

The Right to Counsel

The right to counsel is set out in Section 10(b) of the 1982 Charter of Rights:

> *Everyone has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right.*[74]

To many remote communities in Alberta, these rights are meaningless because there are no lawyers offering services within reach. Although telephone calls are permitted and telephones are required in all police lock-ups throughout the province, detachment commanders of the R.C.M.P. in Desmarais and Fort Vermilion estimate that large numbers of accused Aboriginal people do not exercise their right to contact counsel at the time of arrest. In Fort Chipewyan, the detachment commander estimated that 60% of arrested Aboriginals would not contact counsel, even though they are urged to do so when they are brought into cells and are capable of exercising the right. This situation may suggest that Aboriginals lack confidence in the ability of the legal community to respond to their needs. It also reflects the cultural differences that exist between Aboriginals and white lawyers who, we are told, are generally culturally insensitive.

Accused persons are provided with a telephone list of lawyers to call. In these remote areas, often there are only one or two lawyers on the list. If one is unpopular and the other is away, no contact is made. Various scenarios operate with respect to counsel in northern Alberta. Lawyers are not obliged to be at home to receive calls. Although the police must notify accused person of their right to a lawyer, there are no corresponding obligations for the legal community or government to ensure that a service is provided. A Canadian Civil Liberties Association lawyer recommended in 1975:

> *That the Police have an affirmative duty to advise people, as soon as practicable following arrest, of their rights to silence, to consult a lawyer and to whatever legal aid is available in their jurisdiction.*[75]

In remote areas, legal aid is often simply not available until the accused person gets to court. This means that, for many Aboriginal people, the right to retain and instruct counsel is difficult to exercise, while for others it is simply a meaningless Canadian legal right, made unreal due to geographical isolation.

In urban areas, it is considerably easier for Aboriginal defendants to exercise the right to counsel. A 1989 study in Edmonton determined:

> *Most of the defendants (66.4%) were represented by legal counsel during the Court proceedings although a large portion (35.2%) represented themselves. When broken down by ethnicity the majority of both groups (Natives 61.6% and non-Natives 67.7%) had legal representation in Court. Of the 457 defendants without counsel, 82.7% were non-Native. Whether a lawyer was hired through Legal Aid or privately was not directly observable in Court except when duty counsel was involved.*[76]

We can conclude from these data that, for urban Aboriginal defendants, access to counsel at trial and probably at arrest is not a major problem. However, for a defendant in a remote settlement, chances of receiving legal advice upon arrest is rather slim.

The Task Force Recommends:

4.22 That the Alberta Government, through Legal Aid or a public defenders' system, ensure that legal representation is provided to Aboriginal people at every stage in the criminal justice system, from arrest through trial, and that this service be made available on a 24-hour basis and be culturally sensitive.

Term of Reference:

Courts 4(b)

to determine whether and to what extent differences exist in sentencing practices as between Indian and Metis people and non-Indian and Metis people in the sentencing process.

Plea

Many of the oral and written presentations stated that Aboriginal accused persons enter pleas of guilty to criminal charges simply to get matters over with. It was stated that Aboriginals do not wish to be remanded in custody because time on remand is considered "dead time."

> *There is a history of Metis and Indian people pleading guilty to charges that they may not be guilty of. Some reasons include: plea bargaining, not wanting to spend "dead time" in remand, not aware of legal rights.*[77]

> *People will often plead guilty, simply because they are arrested.*[78]

The Elizabeth Fry Society of Edmonton offered a number of reasons to explain why Aboriginal people are over-represented in the criminal justice system. One of these was:

> *Almost all Native women plead guilty to crimes for which they are accused.*[79]

The Native Brotherhood at Grande Cache had this point of view:

> *Native people don't like remand time. They view it as a waste of time, that they'll never get back. They would sooner plead guilty and get it over with right away. What is the use of fighting a charge when they know they will be pronounced guilty anyway.*[80]

> *Even more tragic is the consistent statement of these people to us: "I plead guilty and got a $100.00 fine. If I didn't, I'd have to stay in jail for weeks, I'd probably be found guilty anyways and then still have to pay the fine." The reality for people in this plight is that they are deliberately pleading guilty to offences, irrespective to their real guilt or lack of guilt, in order to get out of jail.*[81]

The Native Counselling Services of Alberta courtwatch study determined that Aboriginal people plead guilty more often than non-Aboriginals. The study showed that 89.5% of Aboriginals plead guilty compared to 75.5% non-Aboriginals, a difference of 14%.[82]

In general, Aboriginal people appear to display a fatal acceptance of the process. We believe that this has never been otherwise. Even the advent of Legal Aid funded counsel has not seemed to have made a difference.

The Task Force Recommends:

4.23 That, when imposing a custodial sentence or a fine, the Judge should always take into account time spent in custody.

Sentencing

In a study of criminal justice in Canada, the question is asked: "Who is bearing the brunt of justice?" Augustine Brannigan, says that:

> *Many criminologists argue that the law is a mechanism for the control and suppression of the lower classes, the poor and the minority groups."*[83]

Brannigan suggests that such a view tends to create cynicism about the nature of law. He outlines an alternative hypothesis. Rather than arguing that the justice system is aimed at the suppression of the poor, he suggests that it operates

> *in a way that weeds out the rich, the middle class offenders, higher status occupational groups, the politically prominent and the well educated.*[84]

Brannigan states that this means that those people who are arrested and go to jail are usually guilty of their crimes, but they are not the only elements of society engaged in serious harmful behaviour. He argues that the lower classes, the poor, and minority groups are over-represented in the groups which receive the most punitive treatment by the criminal justice system. Brannigan develops his arguments in four stages:[85]

- the slant of the laws
- law enforcement and social class
- on convictions
- on sentencing

In this Report, we will examine the fourth stage, even though convictions obviously are necessary before any sentence is considered. Brannigan argues that

> *criminal convictions do not reflect the only or the most dangerous elements of society or the most dangerous individuals arrested. Conviction is hinged on ability to hire a good lawyer. Status plays a role here as well.*[86]

Our examination of sentencing is primarily based on anecdotal information since the briefs we received did not provide a systematic and specific analysis of sentencing patterns for Aboriginals.

This much is known:

- Aboriginal persons are over-represented in federal as well as provincial jails in Alberta. Provincially, Aboriginals make up only 4% of Albertans, and 30% of incarcerated persons.[87]

- Federally, 10% of incarcerated persons are Aboriginal, although Aboriginals make up only 2% of the Canadian population.[88]

We also know that 78%[89] of Indian men surveyed by the Indian Association of Alberta had been arrested at some time in their lives. Another study showed that 89.5%[90] of Native persons appearing in court pleaded guilty. Ninety-six percent were found guilty.[91]

With such statistics, it should come as no surprise that Aboriginals in Alberta feel discriminated against, or put more strongly, feel persecuted by the criminal justice system. Aboriginals can be categorized as generally poor, and as a minority. Statistics of incarceration bear out the fact that they are "in the cohorts that receive the most punitive treatment by the criminal justice system."

Aboriginals themselves have had much to say about sentencing:

> *Sentencing of aboriginal people in communities adjacent to Reservations is done with personal bias and prejudice.*[92]
>
> *We feel that very often the Judge in Red Earth hands down inappropriately light sentences for violent or abusive behaviour. The Legal System has taken away any power that people at the local level would have used to correct such anti-social behaviour amongst ourselves. But, when we do leave the conditions to be corrected through legal means, it is only dragged on for years, as we must stand by watching the situations get worse and worse.*[93]
>
> *Two aspects of sentencing that cause other problems are restitution and the Fine Option program. There is no avenue to enforce restitution other than as a breach of probation or court order. These mechanisms usually result in a low fine if restitution is not made and nothing else. This does not take into consideration the fact that thefts and other crimes against property have a greater effect upon people that, because of their low incomes, cannot afford to replace or fix what has been lost. Such crimes are thus very serious in a poor community and should be dealt with accordingly. Restitution is not an adequate way of addressing the rights of the victim to compensation.*
>
> *The Fine Option Program is not an effective way to punish criminals for the crimes they have committed. Community service means having something to do to a person who would otherwise have no job or other commitments to attend to. There is no sacrifice and thus, no punishment. Additionally, the supervision of Fine Option participants is a strain upon the resources of the community.*[94]
>
> *Establish an Elders panel to assist in the sentencing process of our community members when they come into conflict with the law. This method may cause a great deal of "shame" for the offender because he would be sentenced by both the Court and by respected Elders. This process may in turn give the Court more respect from our community.*[95]
>
> *The Regional Council would like to see more judicial imagination where the sentencing of Indian people is concerned. We submit that the presence of an Indian person before the Court should be a subjective factor to be considered. Further, the Judge should exercise the powers vested in the Court on the Court's own motion, including inviting Indian Elders, Chiefs or other community leaders to assist the Court in reaching a fair sentence.*[96]

The Federation of Metis Settlements also included comments on sentencing. We have included the full passage in our Report because these comments reflected a deep concern with this aspect of the criminal justice system.

> *In general, it is felt by Settlement members that the sentencing procedures are unfair in relation to the Metis. The conclusion arrived at during*

the meetings and interviews was that there should be more community involvement in sentencing. It was also expressed that traditional values and customs should be taken into consideration during the sentencing procedure. Some of the recommendations follow:

Sentencing should be based more on the traditional ways of distributing justice. Traditional approaches to justice delivery, such as shame tactics, could be used for the youth and adult first offenders. The traditional way of doing this was to bring the offender before the whole community to be confronted by elders and the leaders of the village. The offender was then lectured and reprimanded in front of the whole community. When this type of system was used there were very few repeat offenders. This system could work today if the Metis communities became totally involved, with minimal or no interference from the provincial and federal governments.

Take more seriously the role that alcohol plays in crimes committed by native offenders. Alcohol is one of the most destructive influence affecting Native communities. It causes and exacerbates many of the social and economic problems that are encountered today. If judges understood fully the negative impact alcohol has had on Native people, they might be more inclined to sentence them to alcohol rehabilitation centres rather than incarcerate them. Because of the unique circumstances that induce many Natives to abuse alcohol, this should be taken into consideration when sentencing is being done.

Have more Native input into sentencing procedures. Normally when an offender is found guilty, the Judge has the ultimate say in what type of sentence will be assigned. The only other two individuals who have any influence on what the sentence will be are the prosecutor and the defense attorney. They only give recommendations on the severity of the sentence to be given. Because of their lack of knowledge and understanding of the Native culture, this system is ineffectual when applied to Native offenders. This is why it is important to have more Native input into sentencing procedures.

Judges should give Natives more pre-sentence reports. The Settlement people we talked with believe that Natives are less likely to receive pre-sentence reports than non-Natives. When they do receive a pre-sentence report, it is felt that it is more likely to be biased against them than a non-Natives would be. Some contributing factors to this inequality are Natives with unstable family backgrounds, communities with high unemployment, and alcohol and drug abuse. These factors and the prevailing stereotypes about Native people make it difficult to receive a favourable pre-sentence report. The end result could often be a period of incarceration.

A solution to this problem is for the Judges and probation officers to not prepare their pre-sentence report solely according to Euro-Canadian standards. They should be receiving input from Native offenders home community. If this is done they will develop a more realistic evaluation of the offenders situation.

The problem stems from the method of sentencing. Natives receive lesser sentences when they commit a crime against someone of their own race. In contrast, non-Natives receive harsher sentences for crimes committed against members of their own race.

This inconsistent treatment tends to undervalue Natives as people. Settlement members interviewed strongly felt that when they committed a crime against a non-Native they would receive a harsher sentence than if they committed a crime against a member of their own race. This is especially the case if the crime was a violent one. They also believe that if a non-Native committed a crime against a Native, especially a violent one, they will receive a more lenient sentence than if they committed the same type of crime against a member of their own race.

At the moment there is not substantial evidence to support these allegations. However, there are ways in which statistics can be kept which would reflect the inequalities in sentencing. Statistics should be kept for even minor offences such as

> *speeding or for failing to wear a seat belt, as well as for major offences like rape and murder. The race of the victim and the offender and the length of the sentence given should be recorded for comparison of crimes committed by Natives and non-Natives. This would be an effective way of discovering sentencing discrepancies to help prove or disprove the allegations that Natives receive harsher sentences for crimes committed against non-Natives and vice-versa.*[97]

The Metis Association of Alberta presented a number of brief comments on sentencing, made in community meetings:

> *Judges should order convicted people to attend school while incarcerated.*[98]
>
> *If a Native kills another Native person, the sentence will be lighter than if a Native killed a white person.*[99]
>
> *Far too many Metis people are being incarcerated because of fine default. One should not be further penalized because one is too poor. It costs more money to put people in prison than to sentence them to a fine option program.*[100]
>
> *Judges have far too much discretion with little accountability to the public. Court monitoring should be considered to accumulate enough data to force change. We understand that only an informal system of communication exists where they each get a list of amount of fines for each offence periodically.*[101]

During meetings of the Task Force with some Provincial Court Judges, a different opinion was expressed. The majority of Provincial Court Judges agreed that a "Native discount" operates in sentencing. Some of their comments follow:

> *There are differences; some Indians are treated in a differential way. Women are treated with lesser sentences than the men, depending on the nature of the offence.*
>
> *Provincial Court Judges are bound by guidelines and constraints of higher courts but do impose sentences [on Indians] that are generally lower.*
>
> *Females in the North are not sentenced to custodial terms because there are no facilities in the North available to them.*
>
> *Native peoples are sentenced more lightly than others, fines are much lower.*
>
> *I don't treat anyone differently at all.*[102]

The operation of a "Native discount" in sentencing has been noted in other jurisdictions. This would tend to support the view of the Judges. Associate Chief Judge Murray Sinclair of the Provincial Court of Manitoba made these comments when he spoke to an assembly of new Judges in Quebec:

> *Interestingly, although it would appear that aboriginal people are charged and incarcerated more frequently than their numbers might warrant, their average sentence is shorter, perhaps reflecting the more minor nature of the offences with which they are convicted and/or greater leniency on the part of the judiciary. In addition, aboriginal inmates tend to have more prior convictions before their first incarceratory sentence, suggesting that judicial efforts at the outset of the accused's criminal career were aimed at keeping him or her out of jail initially. As well, while statistics for most parts of the country are deficient, it would appear that the majority of aboriginal accused appear in urban courts rather than rural ones, and even excluding indictable charges (which are dealt with in judicial centres located in larger towns and cities) the majority of aboriginal inmates are incarcerated by urban courts.*
>
> *However, one looks at the statistics, the numbers speak loudly that the justice system generally is failing the aboriginal community.*[103]

Of course, not everyone agrees that a "Native discount" operates in sentencing to the advantage of an Aboriginal accused person. The Grande Cache Native Brotherhood is an example:

> *Native people are always used as examples of the Courts in order to deter others from committing the same offence. Consequently, they usually get stiffer sentences than non-Native peoples with the same offence.*
>
> *This may be due to their inability to speak for themselves, but the fact still remains in the courts ability to look at the case more realistically and justifiably.*[104]

When the perceptions of the judges and Aboriginals are compared, there are obvious variations. Likely, the real state of affairs in terms of sentencing lies somewhere in the middle.

However, a statistical analysis of court sentencing practices in Alberta and elsewhere in Canada shows that Alberta has the second highest rate of sentenced admissions per 1,000 adults charged in Canada.[105] The figure is 51.5% higher than the Canadian average.[106] These figures tell us that, compared to other jurisdictions in Canada, Alberta judges are very active in sentencing adult offenders to custodial dispositions. Included in these figures are the much higher incarceration rates of Aboriginal offenders. Aboriginals, as stated, make up 4% of Alberta's population but their rate of incarceration is 30%.

One disturbing conclusion resulting from this research is worth noting: with respect to adult offenders, the figures show that Alberta judges exhibit a sentencing rate well above the Canadian average. Furthermore, statistics also indicate a trend of increasing custodial dispositions compared to a decline in charging practices by the police.[107] In other words, while the police are charging fewer people, more people are going to jail.

Can we conclude then that Judges sentence Aboriginal offenders more or less harshly than other offenders? Again, the statistics seem to provide some answers. While Aboriginal offenders are generally given lower sentences by the courts than non-Aboriginals, they spend more time in prison.

> *A comparison of the average length of time in custody spent by adult sentenced offenders (including remand later sentenced offenders) with the average aggregate sentence for such offenders shows that female offenders, on average, spend 45.2% of their aggregate sentence in custody compared to 30.7% for male offenders and that Native offenders, on average, spend 35.4% of their aggregate sentence in custody compared to 29.9% for non-Native offenders.*[108]

Term of Reference

Courts 4 (h)

to determine the extent to which Indian and Metis people are imprisoned due specifically to their inability to pay a fine or use a fine option program.

The general unavailability of alternatives to incarceration and fines is problematic in the criminal justice system. The problem is particularly acute in the case of provincial summary conviction offences.

Our statistics show that in 1989, 7,628 offenders were reported as admitted to Alberta Provincial Correctional Centres because of fine default. Of these, 66.4% were non-Aboriginal, and 33.6% were Aboriginal (2,563). Of the 6,752 male fine defaulters, 69.5% (4,693) were non-Aboriginal, and 30.5% (2,059) were Aboriginal. Of the 876 female fine defaulters, 42.5% (372) were non-Aboriginal and 57.5% (504) were Aboriginal.[109] We consider the figures for incarcerated Aboriginal women for fine default to be shocking.

Unemployment rates for Indians on reserves are staggering, ranging from 80 - 90%. We do not have figures for off-reserve Aboriginals, but they are also estimated to be high. Most unemployed Aboriginals are on welfare. It is not difficult to arrive at the conclusion that incarceration in default of a fine is totally inappropriate for Aboriginals who are not part of a wage economy.

The general principles which guide sentencing discretion are the protection of the public, the deterrent effect and the rehabilitation of the offender.

Imprisonment as a method to enforce payment of fines by Aboriginal offenders meets none of the principles of sentencing.

The Indian view of monetary penalties or fines was expressed as follows:

> *The majority of the Native people do not view the economics of penalties and fines with the same conceptual understanding and reasoning as non-Natives. The sentences and incarceration periods based on the amount of fines, in the majority of the cases do not deter the Native person from repeating a wrong doing or does not have a rehabilitation effect.*
>
> *The poverty level of the Native people is high, so one can expect that the Native person will not pay the penalty costs and will have no other alternative but to choose to be incarcerated. The poverty stems from unemployment and the lack of a solid education foundation.*[110]

A study completed in 1982 described problems with fine default related to provincial statute offences:

> *Most of the Provincial crimes and regulations for which Native people are being convicted and incarcerated provide only for summary conviction penalties -- fine and/or incarceration. Because the majority of offences committed by Natives are of this type, alternative sentencing discretion is limited.*[111]

With respect to provincial crimes in Alberta, Judges have no alternatives for summary conviction penalties apart from fines and in-default periods of incarceration. Legislative change will be necessary to ease this burden on poor Aboriginal offenders.

In its 1987 Report, the Canadian Sentencing Commission noted that the current substantive provisions and judicial practice with respect to default work against the concept of equality of results where fines are concerned.[112]

The Commission also noted that in the case of both indictable and summary conviction offences, the Criminal Code permits, but does not direct, the sentencing court to impose a period of incarceration in default of payment of the fine. The Commission noted also that the Criminal Code (Section 646) has been amended to allow an offender to apply for an extension of time to pay the fine, but that there is no general test to determine if the offender's default relates to a refusal as opposed to an inability to pay.[113]

These provisions for fine default are particularly onerous and discriminating against Aboriginals in Alberta because most are poor.

The Sentencing Commission recommended a reduction in the use of imprisonment for fine default. There is little evidence of that recommendation, made in 1987, being implemented in Alberta.

A number of speakers at our community meetings spoke with disdain about a practice associated with the problem of fine default. They stated that some Judges keep a "black book" on offenders. Apparently, these notations are used in determining whether an accused will be granted time to pay for fines levied. By means of the "black book" system, a Judge keeps a tally on those who have failed to meet the time limits on previous occasions. When appearing in court again, accused persons do not get time to pay if their names have been entered in the "black book" previously.

This practice means that many Aboriginals get an automatic jail sentence. For a person who is not part of the wage-economy and receives welfare, this sentencing is discriminatory. It should not continue.

Term of Reference

Courts 4(e)

to determine whether alternatives to imprisonment that may be available to non-Indian and non-Metis people are also available to Indian and Metis people and whether there are any barriers to their having access to those programs.

During our many meetings with inmates in the province, we heard much about the inappropriateness of pre-sentence and pre-disposition reports prepared on Aboriginal adult and young offenders. These reports were generally characterized as culturally insensitive, as most are prepared by "white" probation officers who do not understand the Indian and Metis cultures. The comments of the Federation of Metis Settlements about pre-sentence reports which we quoted earlier describe clearly the problems which result.

In the short-term, these problems must be addressed by training more Aboriginal probation officers, and by requiring the courts to call for more pre-sentence and pre-disposition reports.

Much attention was given to alcohol and substance abuse among Aboriginal offenders. Many presenters told of Aboriginal people hurt, sick, or dying, and deplored the lack of action in this area. Pleas were made for more action by the courts in terms of sentencing, to assist in the elimination of alcohol and substance abuse.

The Federation of Metis Settlements not only described the problem, but also demanded that affected persons be sentenced to treatment rather than to incarceration only.

The most compelling arguments for treatment of alcohol and substance abuse were made in the Brief from Poundmaker's Lodge, an Aboriginal alcohol and drug treatment centre near Edmonton:

> *There is a need for substantive changes to the way in which the Criminal Justice System addresses Native people; there is a need for Police, lawyers, prosecutors, and justices to see the 'illness in the human-being' rather than 'the drunken Indian'. In most Native communities across Canada, 80 percent of the people have a problem with alcohol. Sending our people to jail, or placing them on probation, rather than sending them for treatment, only enables Natives to continue to hurt themselves and their families.*[114]

It is not surprising that Poundmaker's major and first recommendation to the Task Force was

> *that, new legislation be enacted which ensures that strong consideration be given to sentencing the Native adult and young offenders to treatment for their addiction. To assist the Judge in this matter, there should be, as part of the pre-sentencing report, an 'Alcoholism Assessment' completed by a reliable organization, to determine the degree of addiction, and the likelihood of success in treatment. Moreover, the new legislation should include severe 'penalties' if the offender does not want to take treatment.*[115]

Compelling arguments for sentenced treatment were also made by Daniel Beatty (Pawis):

> *Alcohol Related Offences*
>
> *With such a high percentage of alcohol related offences being directed to Natives in Court, would it be too liberal to consider the alcoholism factor over the criminal factor in cases where the pre-sentence reports have indicated so beyond a doubt? Like the physician who prescribes the wrong medication for an ailing patient, in alcohol related cases, the Courts could take into their consideration the most equitable dispositions and practice this consistently. The cost of sentencing an offender to mandatory drug and alcohol treatment and personal development centres could decrease dollars spent on current correctional 'warehousing' and would also indicate that the Courts are focusing on 'preventative and remedial justices' rather than the commonplace 'closet' therapy which keeps alive the revolving door.*
>
> *I believe that a number of offenders would benefit from the positive aspect of treatment in a facility designed for this purpose and also be spared the risk of adopting the institutionalized patterns of behaviour outlined in the previous section on Classification.*[116]

The existing facilities are too limited in proportion to the problem for Judges to make treatment a condition of sentence. We understand that the provincial Solicitor General's Department has contracted for only six beds from Poundmaker's Lodge for the use of provincial inmates who are seeking treatment while incarcerated. Consequently, there are long waiting lists and many inmates are not sent for treatment.

Another problem is that of "enforced treatment." Many argue that this approach will not work if a person is not ready or willing to take treatment.

A practical solution was offered to the Task Force on several occasions. It was suggested that Judges might adjourn the passing of sentence for 28 days, or for whatever length of time is necessary, while accused persons voluntarily admit themselves to treatment.

Apart from legal ramifications, we see two problems with this approach. The first is that circuit court Judges are generally rotated every three months. It is also specified that a Judge who takes the plea must pass sentence. For those Judges who are at the end of a rotation, it would be difficult to adjourn sentencing if they were not returning for three months and were not prepared to return earlier. Offenders caught in these circumstances would probably miss the opportunity to have their case adjourned for treatment.

Secondly, beds in treatment centres are in short supply. It would not be possible to handle the expected large number of clients.

It has been suggested repeatedly that money would be much better spent on treatment rather than on incarceration. Perhaps it is time for Alberta to consider converting one of its many prisons to a treatment facility.

The fine option program is not always available in Aboriginal communities because of the unavailability of supervisors, or because programs are not operated in the communities themselves. The Lesser Slave Lake Regional Council commented:

> *Some of our member Bands have complained that the locum of fine option and community hours served is away from the communities, so that there is no net benefit to the people who were harmed by the Indian offender's actions. Yet when those hours are to be served on Reserves, inadequate supervision, or local pressure has meant that only fractions of the service were actually completed. This is another area in which the Regional Council can play a key role.*[117]

It has also been suggested that the fine options program is not popular with Aboriginal people because it limits their ability to be assisted by their extended families. A straight fine can be paid with assistance from other family members, whereas community service work can only be done by the convicted offender. For these and other reasons, it seems that Aboriginal offenders do not make as much use of the fine option program as non-Aboriginals. Another reason for the lack of use of the program is that the work is done with the knowledge of the community which causes Aboriginal offenders to feel shame. As a result, many Aboriginals prefer the choice of jail, to which they no longer attach a stigma.

Victim surcharge provisions were adopted by amendments to the Criminal Code on July 31, 1989. Revenue raised by surcharges remains with the Province for the purpose of providing services and programs to assist victims of crime. The maximum surcharge under Section 727.9 of the Criminal Code is 15% of the fine. When no fine is imposed, the maximum is ten thousand dollars. Under Sub-Section 2 where an offender establishes undue hardship to the satisfaction of the court, would result from an order the court is not required to make the order. Only a very few comments were made in briefs and oral presentations about victim fine surcharges. In addition, the Task Force had very limited exposure to courts in action. For these reasons, the impact of surcharge provisions on Aboriginal offenders was difficult to ascertain. We came across some instances of imposition of a surcharge. The Task Force hopes that victim fine surcharges are not imposed when offenders are on welfare and poor. We have already suggested that fines are not appropriate sentences for poor Aboriginals. Similarly, we suggest that surcharges are not appropriate.

We were made aware that victims fine surcharges cannot be worked off in the fine option program. We learned that, to improve the situation, the Solicitor

General of Alberta lets offenders who are arrested for fine default, serve one day in custody and applies that amount to the victim fine surcharge.

The Task Force was told by a Court of Queen's Bench Justice that convicted persons in northern Alberta do not have the same access to intermittent sentences as they would have in Calgary and Edmonton. The Honourable Justice stated that this situation impacts disproportionately on the Aboriginal population, and went on to say:

> *Apart altogether from the issue of whether intermittent sentencing should continue as a sentencing option in Canada, the major concern I was raising ... is that within Alberta the lack of availability of facilities to serve intermittent sentences for women and for persons outside Edmonton and Calgary tends to create systemic inequalities of treatment among convicts. Because of the population distribution in Alberta, these systemic inequalities would tend to weigh more heavily on Native women and men than on the population at large. If intermittent sentences were struck from the Code, all Albertans would stand on an equal footing at the outset of the sentencing process; at the moment they do not.*[118]

Based on this observation, the Justice recommended that the matter of the unavailability of resources to carry out Parliament's intention with respect to intermittent sentences be brought to the attention of the Solicitor General. We have adopted this recommendation.

Absence of Statistical Data

The Task Force offers a number of observations on the inability to collect statistical data from the courts. The absence of statistical data has been identified as a problem. Availability of statistical information on Aboriginals would assist in understanding the reasons why Aboriginals come in conflict with the law. Associate Chief Judge Murray Sinclair simply says:

> *[While] statistics for most parts of the country are deficient, it would appear that the majority of Aboriginal accused appear in urban courts rather than rural ones and even excluding indictable charges ... the majority of Aboriginal inmates are incarcerated by urban courts.*[119]

The Federation of Metis Settlements noted:

> *Keep more detailed and comprehensive records and statistics of crimes committed by the Metis/Indian and non-Natives for the purpose of comparison. At present the statistics kept on Metis, Indian and non-Native offenders are too superficial to be a good indicator of any unequal treatment from the Courts when sentencing. The available data only indicates the number of inmates, their racial origin, the types of crimes committed and the average lengths of sentences. With this type of information system, it shows Native offenders as being treated equally. This system can actually portray Native offenders as receiving more lenient sentences than non-Natives for the same types of offences committed. This is misleading because the race of the offenders victim is not included.*[120]

The following observations were made based on research done by the Task Force. With respect to sentencing practices, police record "persons charged" data but these records do not show ethnicity. The courts cannot produce person-based information and do not collect information on a person's ethnic status. Consequently, it is impossible to determine the effect of the courts in the sentencing process beyond general trends, particularly the effect on Aboriginal people. For example, the number of adults charged by the police for all offences, with the exclusion of provincial traffic offences, decreased by 9.1% during the five-year period from 1985 to 1989, whereas the number of sentenced admissions to adult provincial correctional centres increased by 15.2% during the same five-year period.

If meaningful comparisons are to be made between the different components of the criminal justice system in their treatment of Aboriginal people, then all components of that system must collect the same type of information. This information must be person-based and include ethnic status. It is not acceptable to collect only charge-based information which is used, for example, by the courts to administer the court system.

The Canadian Centre for Justice Statistics collected a broad range of person-based information on youth courts in its National Youth Court Survey. This information, unfortunately, does not include data on the ethnic status of offenders. It does, however, reflect conviction rates and sentencing decisions. The collection of such information with respect to criminal courts would be a major improvement.

Any major study or system that attempts to collect data to analyze the sentencing of Aboriginal offenders must also take into account the ethnic status of the victim. Certain sentencing information on Aboriginal people is found in the federal and provincial correctional systems. However, this information is limited to those offenders who receive custody dispositions or are admitted into custody because of fine default. The information shows, for example, that Aboriginal offenders admitted to provincial correctional centres have a lower average aggregate sentence than non-Aboriginal offenders. It should be noted that the bulk of these offenders are male. Male Aboriginal offenders tend to have a higher average length of time in custody than non-Aboriginal offenders. Once again, no data have been collected on offence type, prior convictions, or ethnic status of victims, making an in-depth analysis more difficult.

It is clear that the courts, of all the components of the criminal justice system, suffer from the most serious lack of information on accused offenders. When requested to provide such information on a province-wide basis, the Alberta Attorney General's Department indicated that:

> *the CAP/MIS reports provide the information (other than the distinction between summary conviction and indictable) by the number of cases commenced and/or charges initiated.*
>
> *Ethnic Status - Unknown*
> *Gender - Not Available*
> *Number of accused persons - Not Available*[121]

It is beyond the mandate and resources of this Task Force to conduct an in-depth study of sentencing practices with respect to Aboriginal accused persons. However, we offer the following observations.

A. The court system, as it relates to adult criminal offences, is unable to provide meaningful person-based data on the activities of the courts. No information is available on ethnic status.

B. Considerable information is available on the youth court system. However, rather than being available from the Alberta Attorney General's Department, it can be obtained through the youth court survey conducted by the Canadian Centre for Justice Statistics. Data on ethnic status are not available.

C. The judiciary was unable to provide person-based data related to ethnic status.

D. No detailed information on the various components of the criminal justice system has been collected anywhere to provide an overall picture of the functioning of that system.

The Task Force Recommends:

4.24 That the Province of Alberta establish Elder sentencing panels to assist Judges in the sentencing of convicted Aboriginal persons.

4.25 That alternatives to incarceration for fine default be explored specifically for poor Aboriginal offenders, and most specifically for female Aboriginal offenders.

4.26 That Judges refrain from keeping "black books" in order to determine payment terms for Aboriginal habitual fine defaulters.

4.27 That more pre-sentence and pre-disposition reports be ordered by Judges for Aboriginal adult and young offenders, and that these reports be culturally sensitive and reflective of the community sentiment.

4.28 That accused Aboriginal persons with alcohol and drug addictions be recommended for treatment at the time of sentence, and that such recommendations be endorsed on the warrant of committal.

4.29 That, when and where appropriate, the Judge adjourn the passing of sentence to allow the accused person to obtain treatment, and that when it is demonstrated that the accused has received treatment, the Judge take this information into consideration when imposing sentence.

4.30 That pre-sentence reports on Aboriginal offenders with an apparent alcohol or drug problem include information about the accused person's problem and treatment that may be available.

4.31 That an adequate number of treatment facilities for Aboriginal offenders with alcohol and drug addictions be established in Alberta.

4.32 That more Aboriginal probation officers be recruited and trained to enable the criminal justice system to respond to the provision of culturally sensitive information in pre-sentence and pre-disposition reports.

4.33 That the Government of Alberta address the problem of the unavailability of appropriate facilities in rural and remote Alberta, to permit the carrying out of intermittent sentences which have a disproportionate impact on Aboriginals.

Term of Reference

Courts 4(g)

to examine whether and the extent to which differences exist in the provision of bail, release on own recognizance or other forms of conditional release prior to trial or adjudication between Indian and Metis people and non-Indian and non-Metis people.

Judicial Interim Release

The presumption of innocence unless guilt is proven in a properly constituted court is a fundamental right of any accused person. This right has been codified in the Canadian Charter of Rights and Freedoms. Section 11 (d) provides that any person charged with an offence has the right

> *to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.*[122]

The Charter further provides in Section 11 (e) that any person charged with an offence has the right:

> *not to be denied reasonable bail without just cause.*[123]

The Criminal Code of Canada requires that an arrested person be brought before a Justice within twenty-four hours, or, if a Justice is not available within that time, as soon as possible thereafter.[124]

The intent of the provision is to expedite the release of legally innocent people and to avoid situations where people spend more time in pre-trial detention than is warranted.

During 1989, a study was conducted in Edmonton by Native Counselling Services of Alberta to examine more closely how Aboriginal accused persons were treated in the court system. This study found that, regardless of their criminal records and regardless of the type of offence with which they were charged, Aboriginals were more likely to be held in custody than to be released with a summons to appear.[125]

Native Counselling Services of Alberta suggested that, without bail, an accused person is subjected to many hardships:

- *he will not be able to prove himself by seeking employment.*
- *he will not be able to seek treatment before his next Court appearance.*
- *he may lose his job.*[126]

Several other hardships are involved, especially for those accused persons in remote areas who are denied bail. Because of geographical isolation, the criminal justice system has to remove these people from their home communities and house them in facilities in larger centres such as Peace River. When trapping and hunting is a major part of the life of accused persons, their very livelihood and that of their family is threatened if bail is denied.

Other considerations are that incarceration may make it more difficult to engage a lawyer and that assistance in the assembling of evidence for a defence to the charge is more difficult.

In many Alberta centres, judicial interim release is carried out by Justices of the Peace or Hearing Officers.

Some of the issues involved in a bail hearing were outlined in a 1986 study:

An accused brought before a Justice of the Peace for a bail hearing is presented with three options. He or she may:

1. *adjourn the hearing for a few hours in order to obtain legal advice or representation from his/her lawyer;*
2. *adjourn the hearing to the next available court date in order to obtain legal advice or representation from duty counsel where upon his/her hearing will take place in provincial court before a provincial court judge;*
3. *go ahead with the hearing at that moment and represent him or herself.*

Characteristically, three people take part in the bail hearing: the accused, a J.P. and a police officer who acts as a crown prosecutor. In all but five situations the Crown must prove that the accused should be detained if it wishes to oppose release. The five charges where the onus is reversed are: (1) an indictable offence committed while the accused was awaiting trial on another indictable offence; (2) an indictable offence where the accused is not a resident of Canada; (3) failing to appear, failing to abide by conditions of bail and failing to attend for purposes of identification and fingerprinting; (4) trafficking, possession for the purpose of trafficking, importing or exporting a narcotic; (5) murder or conspiracy to commit murder.

The bail hearing results in either the accused being detained in custody or being released on a bail order. If the Crown does not oppose release the Justice must release the accused on an undertaking to appear. The Crown can only oppose release in order to ensure an accused's attendance in court (primary grounds) or if detention is necessary for the protection or safety of the public (secondary grounds).

There are five types of orders a judge can make, in addition to an undertaking to appear, if the Crown opposes a straight forward release:

i) Undertaking to appear with conditions - conditions may be attached to an undertaking such as: no contact with the victim, to stay within city limits or, as in the case with young offenders, imposition of a curfew.

ii) Release accused on own recognizance with no cash deposit of surety specified - a recognizance is a promise to pay a specified amount of money set by the J.P. if the accused fails to appear in court when directed. A recognizance may be entered into either with or without conditions.

iii) Own recognizance with surety - a surety is another person who assumes a monetary obligation to ensure that the accused attends court when required. If the accused fails to attend, then the surety may be required to pay the money. Again, this order may be with or without conditions or deposit.

iv) Cash bail - the Justice may order that an accused be released only after a specified amount of money is deposited with the court.

v) Order that the accused be detained in custody. (Bail denied).

In any of the first four instances, should the accused fail to attend court at the specified time and place, the monies or valuables are forfeited and the accused faces a new charge of failing to appear.[127]

It may be of use to refer to some of the findings of the 1986 Native Counselling Services of Alberta study:

> *The greatest disparity between the Native and non-Native experience of bail outcome [in Edmonton] is the fact that many more non-Natives (31.5%) as compared to Natives (5.6%) were released on their own undertaking or on a recognizance.*[128]
>
> *The single biggest problem many Natives face when going through a bail hearing is their general inability to understand bail hearing procedure.*[129]

> *Closely related to the problem of people's inability to understand bail hearing procedure is the problem many Natives (17.6%) and non-Natives (11.0%) experience in giving an adequate self-representation before the J.P. It follows that if a person is confused by the bail hearing process, he or she will be unaware of the kind of information the J.P. needs from them... In many cases, for example, the accused enters the court room and once having heard the charges read, attempts to plead guilty or not guilty believing the bail hearing to be his or her trial. Information that the J.P. wants, however, is such that would convince that J.P. that the accused will appear for court and that the accused is not a threat to the safety of the community. Information necessary to secure a lighter bail release includes showing that the accused has a permanent address and job, is part of a recognized stable community, has no failing-to-appear charges and does not possess a lengthy criminal record. Invariably, the J.P. attempts to draw out such information from the accused through questioning. However, on the basis of the study's findings, it is apparent that the J.P. does not always uncover all relevant information.*[130]

The major findings of the Native Counselling Services of Alberta bail hearings study for both Edmonton and Calgary were summarized as follows:

> *In summary, the major findings of the Edmonton study are as follows:*
>
> 1) *A number of individuals had difficulty understanding bail hearing procedure and as a result appeared to be bewildered by the experience.*
>
> 2) *A number of individuals were unable to represent themselves adequately during their bail hearing.*
>
> 3) *Some individuals were unable to raise the bail money necessary for their release.*
>
> *In summary, the major findings of the Calgary study are as follows:*
>
> 1) *Although contradictory evidence exists, it appears that the J.P.'s were able to obtain adequate information and a fair outcome through careful questioning of the accused.*
>
> 2) *Native female young offenders were over-represented in the sample. Of the twelve female young offenders observed in bail hearings, 41.7 percent were Native.*
>
> 3) *A number of Native young offenders could not be released because they were unable to contact a responsible adult who was willing to supervise them.*[131]

The briefs received by the Task Force did not cover judicial interim release in any great detail, but a few commented on problems peculiar to their area. The Lesser Slave Lake Indian Regional Council wrote, for example:

> *Interim release is another area that requires considerable change. Here, too, there is a perception of bias or racism by "white" Justices of the Peace. There have been instances where bail was denied to individuals from the reserve whose residency, employment and lack of a criminal record all were favourable indicators that the person could be released on their own recognizance. Simple inquiries to the Band office about the person would have sufficed. Once again, this issue is particularly disturbing when it involves Indian persons whose English is poor at best. In fairness, "white" Justices of the Peace tend to know the members of their community, but for obvious reasons are not connected to Indian reserve communities.*[132]

Bail was also addressed in several briefs:

> *Aboriginal and Metis people view bail, release on your own recognizance or conditional release different. In that it is not our way and is imposed upon us so we have to abuse it. A program to address this should be developed to emphasis the lack of a positive role model and how it contradicts basic Aboriginal philosophy.*[133]

> *Bail is set too high for a Native's modest income - they're usually on welfare and their welfare cheque goes to pay for the food and rent - none left over for bail.*
>
> *Bail is denied because they're unemployed, no financial backup, no current address, past failing to appear, criminal record, and of course, you can't trust an Indian to appear in court if bail is set.*
>
> *It is an established fact that a person out on bail stands a far better chance on their trial, not to mention the discomfort that's eliminated for himself and his family.*[134]

The Task Force notes that there is disturbing evidence

> *that the denial of bail has a significant effect on both the likelihood of a conviction and on the severity of any sentence that is ultimately meted out.*[135]

The Elizabeth Fry Society of Calgary also addressed the issue:

> *Even though the courts have deemed a person to be manageable in the community pending trial, the lack of financial resources or a bail assistance program keeps those with a low socio-economic status, in prison. Metis and Native peoples are highly representative of this group who cannot meet bail, even though available.*[136]

The Task Force heard from four Hearing Officers, one of whom had completed a study in Calgary for the purpose of determining "what differences, if any, were noticeable between Natives and non-Natives presented by the Calgary Police Service for bail hearings."[137] Some of the conclusions of this study are worth noting:

> *There was a noticeable tendency for the Natives studied to adjourn themselves, in custody, to the next sitting of Provincial Court, in order to receive assistance from the Native Court worker. In one instance, the Native accused appeared, and requested an adjournment in custody so that Native Courtworkers could represent him. This request was made prior to the charge being read or the Crown even indicating whether or not they intended to show cause.*[138]
>
> *For those Natives who had cash bail ordered after the Bail Hearing, a no deposit surety bail was ordered in all but one case...Previous experience, not documented in this study, has indicated that a surety bail posted by a relative, or senior family or band member would ensure court appearance and compliance with any court orders made.*[139]
>
> *The Crown objected to release in 62% of the non-Native cases studied, and in only 52% of the Native cases. These statistics tend to indicate that Native accused, are remaining in custody, and not taking advantage of opportunities to hold show cause hearings before a Hearing Officer. At no time during this study, was there a Native Courtworker available to assist a Native accused with his first appearance before a Hearing Officer.*[140]

A number of conclusions can be drawn from our review of judicial interim release for Aboriginal accused persons. Aboriginals are less likely to be released than non-Aboriginals. They do not understand the process and are more likely to be found guilty. They are over-represented in the jail population. They do not have money for cash bail. As we have seen earlier, many Aboriginals simply plead guilty to "get it over with" because remand time is regarded as dead time or simply a waste of time. Consequently, the judicial interim release process bears heavily on them as a group.

The Task Force Recommends:

4.34 That the suggestion of the Elizabeth Fry Society of Calgary be adopted to reinstate the Bail Assistance Program, and that it be modified to one specific to

Aboriginals because of their specific problems with respect to bail.

4.35 That culturally sensitive bail criteria be developed for Aboriginal accused persons.

4.36 That an Elder sponsorship alternative to bail be studied and developed.

4.37 That cash bail requirements not be applied to poor Aboriginal accused persons, in particular not to those who are living on welfare.

4.38 That, where cash bail is appropriate, Band Councils establish a fund for assistance to Reserve residents.

Adjournments, Trials and Appeals

Little was said in briefs from and oral presentations by Aboriginal people about adjournments, trials, or appeals. We did not attend any trials of Aboriginal accused persons nor did we observe any appeal hearings. We did, however, observe a number of cases involving Aboriginal accused persons being adjourned for a variety of reasons.

Adjournments seem to occur often to permit an accused person to retain or consult counsel. Adjournments may also be the result of non-attendance of witnesses when trials are scheduled to go ahead. Native Counselling Services of Alberta commented:

> *It has also been our experience that unnecessary delays occur when witnesses fail to attend scheduled trials. This presents two problems for the Native accused, first it incurs lengthy delays that can be both financial and time consuming. In the event that there have been previous delays, the judge may rule to proceed with the trial preventing an adequate defence for the accused.*[141]

However, the major reason for court adjournments is the non-appearance of accused persons. Other reasons are the lack or change of counsel. Yet another reason is the time needed for preparation for plea and trial. Lengthy adjournments in youth and adult court are unwarranted but seem to occur frequently. They are currently the subject of public debate in relation to court backlogs.

Only one Brief addressed the specific problems experienced at trial by Aboriginal accused persons. The argument was made that the "defence of Indian people before the courts is a specialized area, both as to the client and as to the system the client is confronted with."[142]

The Brief states further that:

> *At trial, Indian accused are less likely to be represented by counsel, or if represented, less likely to be represented by senior and experienced counsel, or to be able to negotiate 'plea bargains'. At trial, Indian people are also more likely to be convicted.*[143]

The solution offered is a culturally sensitive public defender system. We have examined the public defender system in the Legal Aid chapter of this Report.

Jury trials pose a problem for Aboriginal accused persons because they are held only in the major centres. It is difficult for persons from remote communities to attend these trials. In northern Alberta, where there are extensive Indian and Metis populations, jury trials are only held in Peace River and Fort McMurray (see Appendix B, Court Sittings Segment). The Task Force was also told that Aboriginal persons are not summonsed for jury duty. Thus, they are deprived of the right to be tried by their peers.

Two additional issues were discussed in the context of trials. The first was the physical layout of courtrooms in general, and their sterile and insensitive decor specifically. Many Aboriginal people find these rooms frightening and intimidating, with an atmosphere made worse by the Judge looking down on them from a raised platform. They would like to see some articles representative of their culture displayed in the courtrooms they are required to attend, and have the rooms arranged in a more culturally sensitive manner.

The second issue concerned the requirement of most courts that accused persons and witnesses take or affirm oaths on a Bible. Some Aboriginal people required to testify in court would prefer to swear an oath on a pipe or be cleansed with sweet grass. These aspects of Aboriginal culture should be explored further and the necessary changes should be adopted in Alberta courts of law without delay.

In certain cases, appeals are heard by the Court of Queen's Bench. Most appeals are heard by the Court of Appeal of Alberta. We did not observe any appeals in the course of our work, nor did we hear from the Court of Appeal itself.

The Court of Appeal sits only in Edmonton and Calgary. Yet, it has been described as the most portable court in the province. If the Court of Appeal were to sit at locations in the province outside of Calgary and Edmonton, such sittings would benefit and educate the people, and serve as educational tools for the Court itself. The Court must be seen by Aboriginal people to be understood. We have been told that most criminal appeals are initiated by persons in custody and that appellants rarely attend the Court of Appeal in person.

There is some difficulty for Aboriginal people in being represented by counsel in the Court of Appeal because Legal Aid is difficult to obtain. Legal Aid is not as generous in the case of appeals as it is in the case of trials. We understand that Legal Aid usually obtains two legal opinions on the likelihood of success before counsel is assigned for an appeal. This is particularly onerous for Aboriginal clients who must rely on Legal Aid to a greater degree than average persons in the dominant society.

The Task Force Recommends:

4.39 That Aboriginal people be summonsed regularly for jury duty throughout Alberta.

4.40 That courtrooms serving Aboriginal communities be sensitized physically to Aboriginal culture, and be arranged in a less intimidating manner.

4.41 That Aboriginal persons giving evidence in court be permitted to swear an oath in a traditional way, for example, by swearing an oath on a pipe or being cleansed with sweet grass.

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5.0 Judges, Prosecutors and Lawyers

Preamble

It would be safe to say in general, that court personnel know little about the culture of the Aboriginal people of Alberta. This statement includes, but is not limited to, judges, crown prosecutors and lawyers. One author wrote:

> *in general, judges [prosecutors and lawyers] have no better knowledge than the general public and arguably, as a group, they suffer from a somewhat poorer exposure to the day-to-day life and struggle of the Indian Nations. It can therefore be expected that certain judges will fail to appreciate the history and aspirations of the Indian Nations.*[1]

During our visits to Aboriginal communities, we heard the common complaint that judges, prosecutors, lawyers and police never visit Aboriginal communities other than in their official capacities. On several occasions, the Task Force received hints of invitations such as "drop in for coffee, come and participate in our community activities, come and learn about us so that you will know who it is you are dealing with when our people appear before you in your system." There is a very definite perception that judges, prosecutors and lawyers do not know very much about the Aboriginal people with whom they deal.

Findings and Recommendations

Term of Reference:

Judges, Prosecutors and Lawyers 5.0

to determine whether and the extent to which differences exist in the exercise of prosecutorial discretion between Indian and Metis people and non-Indian and non-Metis people.

Judges

> *'In the long run,' wrote Judge Cardozo, 'there is no guarantee of justice except the personality of the judge.'*[2]

The role of the Judge simply cannot be underestimated. Most people who have come into contact with the courts and actually go to trial seldom go beyond the trial court. The trial Judge

> *is the law to most people and most legal purposes. Whenever a trial judge fails in probity, energy, objectivity, or patience, his failure is observable and cannot but impair public fidelity to law.*[3]

Most Aboriginal people come into contact with Judges at the provincial court level. It is at this level that views about Judges are formed. For instance, Gift Lake Council intimates that court officials do not have much knowledge about Aboriginal communities and their views on justice:

> *On at least two occasions, Gift Lake Council has written to the court informing them of such things and on both accounts the letter and its contents were not considered. Court officials must know what each community considers serious, how it should be dealt with, and the kind of sentence the community expects. Court officials do not act in a void: their acts, deliberations, and results affect not only the offender but the victims and communities as well. Judges and prosecutors must know the people and communities on whose behalf they are acting. They too must be accountable to the people.*
>
> *These comments apply especially to judges. These people are mere mortals like the rest of us. However, they pass judgement without knowing the circumstances that exist outside the walls of their courtroom.* [4]

In an article called "Wrist-watch Justice," Mick Lowe describes a similar opinion of the court held by Indians in northern Ontario. According to Lowe, the Indians consider court slipshod, perfunctory and inadequate. The adjective most used to describe the court was "kangaroo."

> *Upon learning that a reporter was present at the court, a native special constable sneered. "So you saw our 'court'? Good. It's about time that this story got out. Maybe then our MPs will do something." He, too, was unhappy that so many criminal cases had again been delayed.*[5]

Not surprisingly, many Aboriginal people are contemptuous of judges and other court personnel and have "going through the motions" attitudes about the whole criminal justice system. Rupert Ross captures the attitude of Indians toward the criminal justice system when he observes that the function of the Indian dispute resolution system is to arrive at real resolutions of disputes. Resolution is achieved when the disputive parties return to peaceful co-existence and bad feelings are eliminated. According to Ross, Indians expected the "white" man's system to do the same. Having realized that the criminal justice system does not aspire to the restoring of friendship and harmony, Indians now want the system removed from their communities and aspire to a form of "self-government."[6]

These observations underline the importance of the role of the trial judge and the need to be knowledgeable about the people on whom the criminal justice system is imposed. Lack of knowledge can result in a travesty of justice.

The Trial Judge as Fact-Finder

That most court cases never go beyond the trial level emphasizes the importance of the trial Judge. Courts of Appeal rarely reverse the findings of fact by lower courts. Generally, most court cases are not about what the law says but about discovering what really happened.

Fact-finding is crucial not only to justice being done but in justice appearing to be done:

> *When injustice occurs in our legal system, it is less often because of some archaicism or unfairness in the general law than because of some error in the ascertainment of facts, that is, from some failure in the reconstruction at the trial of what had actually happened outside the courtroom.*[7]

Little Bear writes:

> *The Nacirema believe that the best and only way to bring about justice is through the verbal battle. This is a fight theory of justice which assumes a disputatious and contentious transgressor. The Great Spirit knows they are not! It assumes that in a dispute settlement each tribesman, in the sacred chamber's competitive strife, will, through his talking specialist, intelligently and energetically use the evidence to present a story favourable to him and unfavourable to his opponent; and thereby the dispute shaman and the tribal listeners will discover the truth. The shaman will then apply tribal social policies embodied in the sacred birch bark code to the actual facts and somehow miraculously avoid the application of the sacred code to a mistaken version of the facts.*[8]

If Judges lack knowledge about the community and the people, the fact-finding process, which is largely based on the adversarial process and the consequent finding of fault, will likely be suspect. The suspicion will likely result in the perception that judges do not know too much about the world outside the walls of their courtrooms. In this respect, Horowitz observes:

> *To make this clear, it is necessary to distinguish between two kinds of facts: historical facts and social facts. Historical facts are the events that have transpired between the parties to a lawsuit. Social facts are the recurrent patterns of behaviour on which policy must be based.*[9]

Generally, courts are well suited to historical fact-finding but not very skilled in social fact-finding. Horowitz suggests that there is an increasing call for a sociological type of jurisprudence – a judicial type of reasoning that is linked to the daily life of society.[10] He also observes that Canadian Judges lean toward a textually-oriented type of reasoning. This results in highly conceptual decision-making that is poorly grounded in socio-economic facts. In other words, Judges make decisions in an "Ivory Tower" and are rather removed from the real world "out there."

It appears that when Aboriginal people say that judges, prosecutors and lawyers neither know nor understand them, and that the criminal justice system should be brought home, they are asking for a fact-finding and interpretive process based on the Aboriginal "real-world," rather then on standards that are relevant to white people in downtown Edmonton and Calgary.

Who is Qualified?

The above discussion leads to a consideration of desired qualities in trial judges. Harry W. Jones states:

> *The role of umpire in an adversary court proceeding is not one that can be played effectively by a judge who is mediocre in intellect or professional skill, lacking in decisiveness, or in any way emotionally insecure.*[11]

Jones further suggests that a judge must have a strong professional character, be able to stand up to abrasive legal counsel and command respect and confidence in his judgements if justice is to function properly. Weak Judges, he notes, cannot "call them as they see them."

Jones then lists probity, professional skill and acumen, character, energy, and personality as desired qualities for trial Judges.

> *To be authentic in his role, the trial judge must be an unusually honest man, a man of exceptional integrity financially, politically, and socially... Insistence on personal integrity as an indispensable qualification, almost as the indispensable qualification, for judicial office reflects an apprehensive awareness in the legal profession of the immensity of the damage that can be done to the legal order by judicial corruption . . . revelations of judicial corruption create suspicion and loss of confidence in legal processes generally and endanger public respect for law.*[12] .

In the case of Indian and Metis people, there is long-standing recognition that the criminal justice system is both irrelevant to their needs and treats them unfairly. Their attitude is *"What's the use? The cards are stacked against us."* In Aboriginal people's minds, if courts are not fair, then they must be corrupt. In other words, when it comes to Aboriginal people, many of Horowitz's desired qualities are largely absent. Indeed, as Ross says:

> *It is little wonder that an elder recently complained that the court doesn't do what it should do, that it only passes sentence, collects fines, takes off and 'leaves us with the problem'.*[13]

Jones goes on to say:

> *Professional excellence on a trial court of general jurisdiction means at least: 1) wide ranging analytical power comparable to that of the qualified internist in medical practice; 2) mastery, or the intellectual capacity to achieve mastery, of the intricacies of legal procedure and evidence; 3) unusual discernment in dealing with facts and weighing conflicting testimony; and 4) unusual skill at communication with jurymen and witnesses.*[14]

The qualities and skills desirable in judges come about as a result of knowledge of people, their culture and their communities. Aboriginal people have complained repeatedly about the lack of these qualities in judges, prosecutors and defense lawyers.

The non-fulfilment of cultural expectations may lead to an Aboriginal view of most judges as "Judicial tyrants." Jones characterizes judicial tyrants as follows:

> *Every multi-judge trial court of general jurisdiction has at least one tyrant in residence. Sometimes he is a short-tempered man of professional ability and irascible disposition. If his technical qualifications are outstanding, they may compensate in large degree for the unpleasantness of his personality, although the excessively crusty judge will leave a bad taste with litigants, witnesses, and jurymen, however impressive his technical endowments may be to the lawyers in the case.*
>
> *Far more often, as would be expected, the judicial tyrant is a man of inferior intellect and professional skill whose impatient and overbearing manner reflects deeply rooted feelings of his own inferiority. In any metropolitan community, arrogant judges of this second category are readily identified by experienced trial lawyers. There are regular ways by which the sophisticated advocate manages to avoid having his cases assigned to them for trial, with the ironical consequence that the worst judges are likely to get more than their ratable share of the cases in which trial counsel are inferior or inexperienced, and so least able to cope with impatience, oppression, or undue interference from the bench.*[15]

In his article, "Judging Judges," Crawford states:

> *Yet, for the most part, judges are sheltered from the glare of public scrutiny. Safely cloaked in solemnity and the power to punish those who threaten the administration of justice, a few act*

> *as mini-despots who rule until retirement. While in the minority, these judges can colour the entire legal system.*[16]

Acknowledging that these Judges are in the minority, Crawford also states:

> *lawyers say other judges out there are a continuing detriment to the justice system because of their behaviour and attitudes. These few may be given to seemingly random outbursts, yelling at witnesses and counsel or even throwing books at lawyers. Then there are the bizarre cases like the judge who insists on bringing a gun into court and the circuit judge who stops on the highway to collect beer bottles in ditches on the way to court. And a handful allegedly have severe alcohol or drug problems.*[17]

Judges who are not sensitive to cultural differences and who know little about the community in which they conduct court may well be perceived as judicial tyrants, and receive reactions accordingly – especially when expectations are not met. Such conditions are likely to result in perceptions such as 'kangaroo' court.

Judicial Bias

Chief Judge Heino Lilles has suggested that lack of knowledge of the value system of Aboriginal accused persons may result in inappropriate dispositions or disparity in sentencing:

> *But it is imperative to admit the bias beyond bigotry: to recognize the individualized and personal values that intrude on the deliberations of any human being; to understand that there is no judgment of human behaviour that is not subjective; and to appreciate that objective sentencing is a myth that will never be achieved even if we were capable of elevating to judgeship solely the purest in heart.*
>
> *Cross-cultural bias, or inadvertent discrimination resulting from failure to fully appreciate the value system and resulting actions of native accuseds, can result in inappropriate dispositions or disparity in sentencing. The brief comparison of differences in cross-cultural values between natives and non-natives earlier in this paper illustrates how easy it is to misunderstand the actions to someone with a different cultural background.*[18]

Chief Judge Lilles has also made observations about cross-cultural bias and discrimination:

> *The concept of equality in court proceedings is based on the premise that any law is equally applicable to, understood by and concurred in by all those subject to it. It is, in fact, an assumption of cultural homogeneity; it operates to maintain the existing socio-cultural order.*
>
> *In non-legal terms, this assumption is patently false. It is obviously false in the many small, often isolated communities in the territories and northern parts of the provinces where native peoples have a significant, and often predominant, presence. The 'equal' treatment by the justice system of those native people who are culturally and otherwise distinctive is, at best, problematic and, at worst, discriminatory.*
>
> *The term 'criminal justice system' includes many more players and institutions than judges and courts. It is in fact a 'decision network' which includes the complainant, police, Crown attorneys, defence counsel, probation officers and youth workers, judges and correctional agencies. The treatment of a defendant, including the sentence imposed by the judge, depends on the decisions made by all persons within the system. It is important to note that people, not institutions, make these critical decisions. Moreover, most of these decisions are not automatic, but involve the interpretation and application of imprecise rules or procedures and the exercise of considerable discretion.*
>
> *In the remote and isolated communities of northern Canada, these 'decision makers' generally have a different cultural, social and economic background than the majority of the persons in the communities where they serve. For a number of understandable reasons, they*

> *often remain in the community for relatively short periods and leave before they are fully in tune with it and the culture of its residents. In these communities, the probability of systematic cultural bias impacting on decision making at all stages of the criminal justice system is significantly greater than in larger population centres.*
>
> *The term 'cultural bias' as used in this paper, is intended to denote a subconscious proclivity, as opposed to the more obvious preformed judgments implied by the word 'prejudice.' One author described bias as follows: "Acting upon the same propositions and under the same apparent conditions one individual will decide one way, and another, another way. This runs through all human experience. It means that there is a bias in every personality. The nature of this bias is a composite of hereditary tendencies, parental influences, personal experiences and the particular environmental pressure."*[19]

Others would seem to agree with the remarks of Chief Judge Lilles about judicial bias. For instance, Ominayak and Ryan conclude that a hunting and trapping way of life is a viable way of life for the Cree and that the Cree want to pursue this lifestyle. But some Judges do not seem to understand this desire. It appears that they consider urban middle-class life-style, and wage economy to be the only viable way of life. Ominayak and Ryan have said that:

> *Not surprisingly, the courts reflected the prevailing sentiments of the majority society in their decisions and in so doing failed to comprehend the magnitude of their decisions.*[20]

The sentiments to which Ominayak and Ryan refer are very well captured by Mr. Justice Steel:

> *At that time, Europeans did not consider Indians to be equal to themselves and it is inconceivable that the king would have made such vast grants to undefined bands, thus restricting his European subjects from occupying these lands in the future except at great expense.*[21]

To Aboriginal people, this view of Aboriginals continues to persist. Ominayak and Ryan conclude that:

> *In essence, we have evidence here of judicial bias against those whose lives are not only different and therefore somehow suspect, but also who are too poor to provide an undertaking thus making them doubly suspicious. We are then left with the conclusion that the poor cannot look to the courts for injunctive relief against the rich and so we have a class bias as well as a racial one.*[22]

Although subtle and usually unconscious, judicial bias still exists. The judiciary must face this fact and act to remedy it. Cross-cultural education may be a good starting point. The appointment of Aboriginal judicial personnel would be a true improvement. Some Aboriginal people believe that a separate justice system is the best answer.

Prosecutors

Although most of what has been said about judges applies to prosecutors and lawyers as well, a number of issues and concerns are specific to prosecutors. Among them are the role of the prosecutor, prosecutorial discretion, multiple charges, and plea bargaining.

The Role of the Prosecutor

The Royal Commission on the Donald Marshall, Jr. Prosecution commented on the role of the prosecutor:

> *While the courtroom setting is adversarial, the Crown prosecutor must make sure the criminal justice system itself functions in a manner that is scrupulously fair. The phrase "criminal justice*

> *system" is not a mistake of history - we do not have a "criminal convictions system." Justice is an ideal that requires strict adherence to the principles of fairness and impartiality. The Crown prosecutor as the representative of the State is responsible for seeing that the State's system of law enforcement works fairly.*[23]

Some Aboriginals do not view the role of the prosecutor in the same way. The view of the Blood Tribe, presented in a Brief to the Task Force, is an example:

> *The prosecutor is viewed as the lawyer for the police and not as the lawyer for the Crown whose duty is to bring a matter to the Court's attention in an unbiased manner. He conducts his prosecutions in a courtroom physically located with the police and consults with them at every turn. No efforts are made by the prosecutor to enlighten himself to the customs and traditions of the local Indian community that ought to be brought to the attention of the Court. The Prosecutor is not imaginative in his submissions to the Court when prosecuting an Indian Offender that would take into account unique customs and traditions.*[24]

The Blood Tribe also stated:

> *In the courts our tribal members frequently attend, there is a profound perception where a prosecutor is viewed as the lawyer for the "police", who arrives ten minutes before Court opens, takes over a stack of files provided by the Police, and whose job then, is to "win" a conviction against those appearing before the court and against him. This perception is undeniably real and does not serve to improve Indian-Judicial relations.*[25]

According to the Blood Tribe, the prosecutor usually accepts information supplied by the police without question. Consequently, the personal biases of the police are incorporated in the information available to the Prosecutor.

> *It is the duty of the prosecuting counsel to satisfy himself that the charges being commenced against an Indian defendant are based on real reasonable and probable grounds.*[26]

In other words, the prosecutors seldom satisfy themselves independently that the information given to them is true. The public impression of prosecutors is often one that envisions them coming into docket court fumbling through police files in an attempt to read them for the first time on their way to the "podium."

> *Suddenly it becomes clear that for most defendants in the criminal process, there is scant regard for them as individuals. They are numbers on dockets, faceless ones to be processed and sent on their way. The gap between the theory and the reality is enormous.*[27]

Prosecutorial Discretion

Chief Judge Lilles states that discretion is an important part of the justice system but that it is often associated with differences in treatment of individuals. He feels that discretion is strongly affected by biases resulting from combinations of age, religion, social class, parental influences, personal experiences and environmental pressure. These factors become especially relevant when the accused person is from a different culture with different values. Chief Judge Lilles believes that there is a strong probability that prosecutors are influenced by the police and that they therefore bring police practices and attitudes into the courtroom. This problem is compounded by the fact that the public generally views the Prosecutor as a lawyer for the police. According to Judge Lilles, prosecutorial discretion exists but is exercised only in the rarest and clearest of cases.

Plea Bargaining, Multiple-Charges and the Prosecutor

Augustine Brannigan observes that most criminal cases never go to trial. Of the few that do go to court, many are disposed of through plea bargaining. Most of the cases that do go to trial concern "negotiated guilty pleas."[28] Plea bargaining is an informal process of consultation between the prosecutor and defense counsel for the purpose of arriving at a mutually agreeable outcome without a formal trial or to effect a reduction in charges.

Plea bargaining as a disposition mechanism was developed for two main reasons: expediency and overcharging.

> *If everyone facing criminal charges elected to have his or her case heard at a trial, the already crowded court calendar would face mayhem.*[29]

> *A second related argument has to do with overcharging by the police. This argument holds that for any given criminal behaviour the police lay as many charges as possible in order to register a conviction on at least one of them. The rationale is to convict the offender but to do this with whatever charge will work.*[30]

While plea bargaining may be a useful mechanism for disposing of relatively minor cases, it has also been criticized. Brannigan suggests that plea bargaining may be a travesty of justice because it ignores certain basic principles like the rule of law and due process.[31]

> *Cases for which there exist factual bases are discarded in a secretive and hence unaccountable fashion as a result of the subjective decisions of individual prosecutors.*[32]

According to Brannigan, criminologists believe that defendants are motivated to accept plea bargains by the idea of "getting away" with the smallest penalty, or the least serious police record possible – regardless of the original offence.[33] A serious possibility of injustice exists for persons who are culturally different – about whom the Prosecutor knows nothing – especially if these persons do not understand the criminal justice system. For instance, when multiple charges are laid by police, an accused may be faced with multiple convictions and punishments. In Kienapple *v* The Queen, 1974, the Supreme Court of Canada reasoned that when a case meets the requirement of more than one offence, an accused person can only be convicted on one charge. If a criminal act meets the requirements of more than one offence, the charges must be in the alternative. The importance of the Kienapple case is that legally required reductions of charges may be perceived as plea bargaining. This misperception may operate to the detriment of an accused person. In other words, the offer of a prosecutor to drop a number of charges in exchange for a guilty plea to one charge may not be plea-bargaining at all.

Defense Lawyers

Most people have confidence in lawyers. However, the usual activities of lawyers consist of providing advice and advocacy with respect to what a court might do in any particular case. Generally, lawyers do not study the societal impact of the law or a decision. However, if lawyers look beyond the law and court decisions, they often see statutes and court decisions as the dominant factors in the behaviour of the community.[34]

Moore and Sussman suggest that legally irrelevant criteria such as political and journalistic pressures, public hysteria, prejudice against minority groups and the personality of the Judge have an enormous influence on sentences passed by Judges. Most opinions on this subject agree on the view that the humour of Judges, their digestion, or their unconscious fears and desires – in short, the whims of "judicial temperament" – determine the penalties imposed on criminal offenders.[35] Are those lawyers who attempt to predict the behaviour of a court skilled and trained in psychoanalytical theory and, thus, able to base their predictions on the legally irrelevant criteria noted by Moore and Sussman? Do law schools teach such skills? These important questions must be asked if lawyers are to act in the best interests of Aboriginal clients.

The role of the defense lawyer in plea bargaining is crucial. Brannigan states that:

> *The alleged threat that the prosecutor will be punitive should the accused act taciturn and fail to cooperate is cited as the reason for submission to false charges. In fact, Blumberg characterizes the role of the defense counsel as a kind of confidence man who swindles the client by making deals with prosecutors that serve the interests of both professionals at the expense of the client.*[36]

Brannigan doubts that this happens systematically. However, the possibility is real in the case of Aboriginal offenders. During our visits to correction institutions in Alberta, we heard again and again, stories about inmates who were advised by their legal counsel to plead guilty to a lesser charge or to plead guilty to one charge and have others dropped, or were offered promises of lighter sentences if they pleaded guilty. Such complaints do not seem to be unfounded in view of at least one instance where duty counsel actually recommended a short sharp sentence.[37]

Conclusions

The lack of knowledge about Aboriginal people by the legal profession results in the application of a system that is alien to Aboriginals. The failure of the legal profession to understand this condition results in systemic discrimination.

> *The second term that is used consistently in this paper is 'institutionalized racism.' This I use in the sense of entrenched attitudes, carefully taught and assumed, usually unconscious and which are exhibited in often subtle but hostile racist behaviour towards people of another class and colour. Such behaviour is a normative part of bureaucratic behaviour within both the federal and provincial Indian affairs administration. The term harkens back to the concepts of the noble savage, the wardship mentality, the moral majority position. Racism is endemic in our society and is expressed most often in ethnocentric, moralistic ways. Its effect is the denigration of the value of other cultures, and it is a constant challenge to the dignity and acceptability of native peoples. Frideres states, "According to racist theory, no amount of efforts by natives or assistance from whites could compensate for the natives' natural inferiority. This conviction is evident in the government's decision to establish native reservations. The reserves were to act as holding pens for worthless people, inferior children, wards of the nation."*
>
> *Further, Frideres holds that the current myth of equality, that is, that all humans are equal no matter how different they are, is equally discriminatory because the mythology acts as rationale to deny special privileges, programs and affirmative action.*[38]

Ominayak and Ryan observe further:

> *If one looks carefully at the assumptions that the native life-styles are not commensurate with valued types of twentieth century living, then the double-edged dilemma is clear: whatever one is as a native, it is not good enough, or defensible, or acceptable. It is clear to me that the court failed to accept the statements of the Cree as believable because the Cree did not fit into the suitable categories of mythological Indians, that is, they had a viable way of life which was under assault, but because they used the technological trappings of our society, they ought not to be hunters and trappers. In other words, the court reflected the institutionalized, racist view of Canadian society while also applying criteria which were irrelevant to minority group arguments.*[39]

Associate Chief Judge Murray Sinclair of the Provincial Court of Manitoba addressed the issue of judicial bias as follows:

> *One of the major issues with which we will have to come face to face, is the extent to which systemic discrimination plays a part in the problem of over-representation of aboriginal people in the justice system and the role played by cultural bias.*
>
> *It is trite to say that aboriginal people have unique cultures and histories. Part of the unique history of aboriginal people in this country is the way in which the relationship of aboriginal people to the criminal justice system evolved. Indian people in Canada were not always subject to the same criminal laws as were other Canadians. It is possible therefore from time to time that the question of the historical application of the criminal law to Indian people may arise and it may in fact become relevant in future litigation.*
>
> *It is apparent from the historical evidence that Canadian lawmakers made liberal use of criminal and quasi-criminal laws to curtail traditional aboriginal rights and customs. This fact combined with the fact that for most of the history of the white man and the Indian in Canada, Indians were not subject to the white man's laws, can be important for us to come to an understanding about how and why cases come before us and perhaps give us some inkling about how best to resolve them.*[40]

These comments lead us to conclude that the lack of knowledge on the part of Judges, Prosecutors, and defense counsel results in perceptions of and conclusions about racism by many Aboriginal people.

A different but not unrelated aspect of perceptions of and conclusions about racism is the seeming irrelevance of the criminal justice system to Aboriginal culture and values. Rupert Ross observes:

> *When we impose our institutions on them (or, as may be more accurate, when they invite our institutions to assist them without suspecting how foreign they are in both form and function), it is little wonder that success is meagre at best.*[41]

These observations are affirmed by the Windigo Tribal Council:

> *[the Court] with its long delays and multiple adjournments, makes little sense to the communities in their quest to maintain order and ensure the resolutions of local problems in a timely fashion. For whatever reasons, there are delays in the disposition of cases once charges have been laid. It has been reported that other offenses are committed by individuals who are awaiting their cases to be heard in the courts. The court is thus seen as an ineffective means to control undesirable behaviour. Also, the longer the case is delayed before trial, the more chance there is that it will be lost due to a lack of witnesses. The end result is a lack of respect for the courts and the administration of justice.*[42]

In view of the observations by Rupert Ross and the Windigo Tribal Council Justice Review Committee, we may conclude that the seeming irrelevance of the criminal justice system results in a lack of respect for the system. The system does not meet its goals of deterring criminal behaviour.

The mechanistic, procedural, impersonal and methodical way of dealing with people in courts is another factor that contributes to lack of respect for the courts. Examples are long dockets; granting of numerous delays; Prosecutors familiarizing themselves with cases on their way to the courtroom; Judges realizing that tomorrow will not bring improvements and simply deciding to dispose of cases, motivated by the expediency of the moment, all of these factors contribute to a feeling of alienation on the part of accused persons. They are no longer persons but simply numbers on dockets.[43] The Task Force observed this phenomenon on at least two occasions.[44] Dockets were a "mile" long. It was rather obvious that the primary goal of the Judges, Prosecutors, and defense counsel was to get through the docket. This precise situation is captured by Lowe:

> *As an hour slips by, the judge is cool, but aware of the pressure of time on his flying court. He has to be in Niagara Falls tonight. In order to reach connecting flights in Sudbury and Toronto, he will have to leave Kashechewan no later than noon, and it is already nearly ten o'clock.*[45]

The Task Force Recommends:

5.1 That, in view of their apparent lack of knowledge about Aboriginal culture, Judges, lawyers, and Prosecutors receive cross-cultural education immediately, intensively, and on an on-going basis. The person in charge of education for each group should be given this responsibility.

5.2 That throughout the legal process, Judges be more sensitive and take into consideration cultural and socio-economic factors when Aboriginal people appear before them.

5.3 That Judges ensure that Aboriginal accused persons have been advised of all their rights and fully understand the legal process when they appear in court.

5.4 That prosecutors strictly adhere to principles of fairness and justice and before proceeding, the Prosecutor be satisfied that proceeding with a case is in the interest of the public.

5.5 That the concept of plea bargaining be reviewed by Crown Prosecutors and defence lawyers to establish ground rules on which plea bargaining may be based.

5.6 That no plea bargain be concluded without the informed consent of the Aboriginal accused person.

5.7 That the Attorney General of Alberta establish policy for the diversion of Aboriginal adults and that multiple charges be closely scrutinized and discouraged by Crown prosecutors.

5.8 That defence counsel always act in the best interest of Aboriginal clients by familiarizing themselves with the total situation of the accused person, by guarding against spurious charges, by educating clients about the legal process, by considering only legitimate plea bargain offers, and by refraining from raising expectations about reduction of charges and/or sentences.

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6.0 Corrections

"People have strong feelings of guilt and shame and are hurting tremendously. Feelings are deep and unexpressed. People just try to forget what happened. Grieving people hide their deep-seated feelings and are judged by others as being cold-blooded. They don't know we are bleeding inside" [1]

Preamble

The general purpose of the criminal justice system is to protect society. Certain measures have been designed to accomplish that purpose. They include punishment, deterrence of the individual, deterrence of the public, rehabilitation, and restitution. Together, these measures are aimed at reducing crime in general and reducing an individual's criminal activities specifically. However, they do not appear to have the desired effect on Aboriginal persons:

> *No correctional system in Canada, including the Alberta Correctional System, is presently structured or equipped to deal with those underlying or causative factors which result in a disproportionate number of Natives entering the system. Nevertheless, society must find some means of coping with the end product of this complex social phenomenon.*[2]

Statistics of recidivism lead us to the inescapable conclusion that current sentencing practices and the manner in which sentences are implemented have very little impact on reducing the level of crime in Aboriginal communities or in communities where Aboriginals reside. We have also observed that the imposition and enforcement of sentences have very little impact on Aboriginal persons. Almost none of the young and adult Aboriginal offenders with whom we spoke in correctional facilities were first time offenders, and almost all of them had been incarcerated previously. In many cases, incarceration was not an imposition and, more often than not, it was little deterrence to further criminal activity. We also observed that rehabilitation and restitution are seldom achieved goals. Over and over again, we were told that the present sanctions imposed by the criminal justice system do very little to achieve these goals where Aboriginal people are concerned. The Alexander Tribal government observes:

> *After the courts have passed sentencing and forms of retribution upon the Offender, he must deal with this problem within the correctional institution. Society feels this system is a technique of rehabilitation, or a time for the Offender to think about what he has done. Often we find that the Offenders come back from jail unchanged, the court system accomplishing nothing, but delaying the chance for real rehabilitation. It has often been the case that Offenders come back from jail more self-centred, more isolated from the community, and more defiant to others around them. The court process*

> *has then added to the already existing social disharmony as it has made it harder to effectively reintegrate offenders into the indian community.*[3]

It is our view that easy responses to the problems, such as "fast-tracking" an Aboriginal person through the sentence process, or simply making the sentence less burdensome, are not the answer. We agree with the John Howard Society of Alberta when it says:

> *Consequently, new approaches are required with respect to the treatment of Natives within the criminal justice system, some of which will require enabling legislation. These approaches should include Aboriginal participation in, and some control over, correctional issues affecting Natives. It will be necessary to involve Native organizations in all phases of the development of these new approaches.*[4]

New approaches are also implied in the comments of Rupert Ross:

> *The point I wish to make is that refusals of Native people to do what we assume all truly repentant people would do if they were genuinely motivated towards rehabilitation should not automatically lead us to the conclusion that they are remorseless individuals with no desire for rehabilitation. Native refusals can just as easily be strong indicators that they maintain a determined allegiance to ethical considerations, amongst which may well be a heart-felt desire to see to it that they never repeat their anti-social act.*[5]

In this Report, we have made reference from time to time to individuals who have not yet received a final sentence and are still on remand status. These individuals are, of course, innocent until the courts find them guilty. They are, nevertheless, being detained in correctional facilities because a court has determined that they are a potential danger to the public or that they are not likely to be present at their trial. In this Report, we use the phrase "inmate" as meaning both sentenced and remanded prisoners.

The term "corrections" generally refers to the after-sentence part of the criminal justice system. It should be noted that sentences imposed by the court are the maximum term that can be served. Terms of imprisonment, for example, for five years, are subject to statutory provisions which require that inmates may be released on parole or on temporary absences at the 1/6 point of their sentence. All components of the criminal justice system, including corrections, employ a form of "diversion" in its broadest sense. The Solicitor General's Department of Alberta and the federal Solicitor General's Department have considerable latitude and discretion in determining to what extent and under what conditions a sentence will be implemented. For example, the court may sentence an individual to a fine. The sentenced person may pay none or only a part of the fine, or may elect instead to participate in the fine options program, if eligible. The sentence of a fine may be effective or completely ineffective. A second example concerns the imposition of probation. Standard conditions for probation are: keeping the peace, being of good behaviour, and reporting as required to a probation officer, coupled with a common provision to take such alcohol and drug abuse counselling as may be required. Such conditions are only as effective as the degree and quality of supervision provided by the probation officer.

Crown Prosecutors, Judges, defence lawyers, and many service providers are not sufficiently informed about the available sentencing options. There is even less knowledge about how and under what circumstances the various sentencing options are implemented. In many Aboriginal communities, inter-agency meetings are held to discuss day-to-day problems and matters of policy. However, these meetings seldom include representatives of correctional services, the National Parole Board, Temporary Absence Committees, or probation officers. Clearly, it would be useful for individuals involved in the sentencing process to be knowledgeable about the manner in which the sentence will be served in order to weigh and make knowledgeable decisions about appropriate sentencing alternatives. It is equally clear that corrections staff and community supervision staff involved in the process after sentencing have considerable information, knowledge, and expertise in identifying sentences "that work." These people should be consulted.

The Task Force is aware that certain forums exist in which police, federal and provincial corrections staff, lawyers and the judiciary can learn from each other and explore the effects of interactions which occur between the components of the criminal justice system. We are also aware that such opportunities are not always used. It seems that members of the judiciary, with a few exceptions, prefer to remain aloof from the system in which they play such a central role. It is the opinion of the Task Force that a full understanding of the criminal justice system is a necessary and desirable objective for each of the components of this system, and that the lack of participation by members of the judiciary is detrimental to themselves and to the criminal justice system. This situation must change and a spirit of collective ownership of problems and solutions must prevail if the criminal justice system is to properly serve the community and community needs. Rupert Ross observes:

> *Despite the inevitable value conflicts, however, it remains my view that a great deal can be accomplished if we make conscious and sustained efforts to invite Native involvement in the course of sentencing deliberations. That involvement should, in my view, consist of fulsome representation of the background factors which gave rise to the offence as well as detailed presentations of community and individual views on sentencing alternatives. Finally, bands should be encouraged to establish and administer community rehabilitation and deterrence programs which they anticipate can be productive for their own people. While we share the same goals in most respects, it is my sense that achieving those goals in Native communities frequently requires such Band involvement, and that it is the lack of such involvement which has given rise to a significant portion of the dissatisfaction now being voiced from so many quarters.*[6]

We note that, by the provisions of Section 732 of The Criminal Code, sentences in excess of two years are to be served in a federal penitentiary administered by the federal government, whereas sentences of less than two years are administered by the provincial government. Between these two governments, corrections are administered in different ways. There are different service providers, and different policies, procedures, and priorities, some of which are in conflict with each other. By agreements struck between the Province of Alberta and the Government of Canada, good cooperation exists generally in accommodating Aboriginal inmates closer to their homes. However, the very existence of two separate delivery agencies sometimes creates confusion and inefficiencies. For example, the National Parole Board's process and the Temporary Absence Committee's process administered by the provincial government operate very differently, have different priorities, and yet perform virtually the same task.

The Task Force Recommends:

6.1 That the number of meetings be increased between agents of the criminal justice system (defence counsel, Crown Prosecutor, Judges) and those agents of the criminal justice system who are involved in implementing a sentence (for example, federal and provincial Solicitor General Departments), and that participation in these meetings be broadened.

6.2 That there be regular meetings between service providers (for example, Native Counselling Service of Alberta, Poundmaker's Lodge, the Elizabeth Fry Society) involved in the criminal justice system before sentence, and corrections and community corrections/supervision personnel to discuss problems and other matters related to the person in conflict with the law.

6.3 That ways be found to provide information and feedback to Prosecutors, Judges, and defence lawyers regarding viable and effective sentencing options for Aboriginals. Possible resources could be sentencing "experts", sentencing panels, and community groups.

6.4 That there be regular meetings between the National Parole Board, the Correctional Service of Canada and the provincial Solicitor General's Department specifically with respect to Aboriginal issues, to ensure uniformity and consistency in the application of programs and standards.

Term of Reference:

Corrections 6 (a)

to examine the current admission rates/numbers, incarceration rates/numbers, average sentence and average length of time served in prison by Indian and Metis people in comparison to non-indian and non-metis people.

It is a well known and historically persistent fact that the Aboriginal peoples of Alberta have been dramatically and proportionately over-represented in jails and penitentiaries. Task Force research has determined that, over the past five years, the percentage of Aboriginals in jail has ranged from 29.7% to 31.5% of the total Aboriginal population. For 1989, the most recent year, the percentage is 31.1%[7] compared to a 4% to 5% representation of the general population of Alberta. This information alone is sufficient to cause serious concern. However, even the most superficial reading of the remaining statistical data reveals an abundance of similarly disturbing inequities that suggest discriminatory practices throughout the criminal justice system.

We do not intend to present an exhaustive picture of the Aboriginal experience. Rather, we offer an overview to set the stage for the discussion on corrections. The statistical data which accompany this Report contain extensive and detailed descriptions from a variety of sources and may be consulted for further information.

The statistics compiled by the Task Force indicate that the criminal justice system, as it operates in Alberta, utilizes a punitive approach. There is a noticeable decline in the number of adults charged by police in Alberta between the years 1985 and 1989[8].

Yet, the same period of time shows exactly the opposite trend in sentenced admissions to provincial adult correctional facilities[9]. The Task Force reached the conclusion that

> *the data tend to suggest that it is the increasing activity of the courts rather than the activity of the police that is contributing to the increased demands being placed upon the provincial and federal correctional systems.*[10]

This conclusion is affirmed, with a slightly different emphasis:

> *Alberta has high police charging activity and a very high sentencing activity for adult offenders compared to the rest of Canada with, as stated before, a definite bias toward the use of custodial dispositions compared to probation.*[11]

Statistical data on police and courts do not allow for a detailed analysis of systemic bias and the subsequent differential representation as issues which affect the Aboriginal people involved. There are, however, indications which would lead to the cautious conclusion that these issues affect Aboriginals. Our data comes solely from the Calgary and Edmonton police services, and reliability is not guaranteed. Yet, we estimate that of all persons charged, 13.7% are Aboriginal.[12] With Aboriginal representation in the general population of Alberta commonly accepted as 4%, and taking into account the difficulties in obtaining statistical data, it seems reasonable to conclude that Aboriginal people are over-represented at the police level of involvement in the criminal justice system.

For the sake of argument, let 13.7% of charged persons be deemed to represent a reasonable average of Aboriginals in this group, and to reflect the policing activity. If we consider the courts as neutral in their effect on Aboriginals, this percentage should not vary significantly for Aboriginals going from courts to prisons. However, even at the crudest level of comparison, we find a significant increase in the proportionate representation of Aboriginal adults admitted to correctional centres: "Of the 31,316 total admissions to adult correctional centres, 29.5% (8,972) involved Aboriginal offenders."[13] The courts appear to contribute to the over-representation of Aboriginal people in prison in a direct and significant manner.

The statistics provide us with some clues as to what might be happening. We found that:

> *Data from the five-year period indicate that sentenced admissions to Alberta adult correctional centres have increased and that the rate of increase for Native offenders was higher than for non-Native offenders.*[14]

A further observation refers to liquor offences:

> *Clearly, Native offenders are greatly over-represented with respect to Liquor Control Act convictions. The 1,380 Native offenders with a Liquor Control Act conviction made up 20.9% of all sentenced Native admissions (6,595) whereas the 801 non-Native offenders with such convictions only represented 5.5% of the 14,604 non-Native sentenced admissions.*[15]

In addition,

> *the two most striking differences between the ethnic groups were the low proportion of Native new cases accounted for by probation compared to the non-Native population and the very high involvement of Natives in the fine option program.*[16]

Generally, Aboriginals are less likely to receive a probation release than they are to be admitted to a correctional centre.[17] Much has been said about the incidence of alcohol problems in Aboriginal communities. It appears that such problems are dealt with by the criminal justice system without being viewed as symptomatic of other, underlying, problems. The courts do not appear to make use of opportunities to refer Aboriginals convicted of alcohol-related offences to treatment in the community.

When Aboriginal people proceed through the courts, they are also much more likely to receive sentences leading to admission to a federal institution. The total of admissions of federal offenders in Alberta increased by 25% between 1985 and 1989. Of these, non-Aboriginal admissions increased by 19.0%, while Aboriginal admissions increased by 37.3%. The year 1988 showed the most dramatic increase in Aboriginal admissions from the year 1985 with a 44.5% increase of Aboriginals, compared to 5.7% for non-Aboriginals.[18] These differences can be explained, in part, by variances in offence type between the two groups:

> *Generally, male Native offenders recorded higher involvement with offences against the person and violent offences (except murder) and non-Native offenders recorded higher involvement with property related offences during the five-year period (1985-1989).*[19]

The Task Force has been told frequently that, with respect to cultural differences, cultural sensitivity and understanding, the community's view of accused persons and their conduct should be taken into account at different points of the criminal justice system.

Young offenders fare just as poorly as adult offenders. Their over-representation in the criminal justice system is even more dramatic than it is for adult Aboriginal offenders. Our data showed that:

> *The number of youths charged by Police from 1986 to 1989 showed a 6.1% increase.*[20]

In addition:

> *Since 1986/87 to 1988/89 over 84% of young persons appearing before Youth Courts have been found guilty of at least one charge.*[21]

The overall statistics for young offenders show that in 1989, 34.9% of the 4,160 admissions concerned Aboriginal youth. This compares to 28.6% Aboriginal adult admissions to correctional facilities in Alberta in the same year.[22]

In 1989, in Alberta, Aboriginal young offenders were "more likely to be admitted to a young offender facility than their non-Native counterpart."[23] More specifically,

> *38.5% of Native young offenders were admitted to young offender centre facilities compared to 21.4% for non-Native young offenders.*[24]

Our statistics showed that:

> *For those convicted young offenders, however, it would appear that youth courts are slowly decreasing their use of custody dispositions whilst increasing their use of fines, probation orders and community service order dispositions.*[25]

Yet, while

> *"the non-Native young offender sentenced admissions experienced an 8.0% drop between 1986 and 1989 from 827 to 761, with a*

> *maximum decrease in 1988 of 11.6% from 1986, Native young offender sentenced admissions recorded a consistent increase from 1986 to 1989 with an overall 18.2% increase from 347 in 1986 to 410 in 1989."*[26]

It appears that the decreasing use of custody dispositions applies solely to non-Aboriginals. The rate of decrease is apparently slowed down by a simultaneous increase for Aboriginal young offenders.

> *Generally, young offenders are sentenced, on average, more severely and spend a longer time in custody than adult offenders - this is particularly true for Native young offenders.*[27]

Aboriginal young offenders do not fare any better in other aspects of Youth Court dispositions. Indeed,

> *of particular concern is the decline of use of probation for Native young offenders and the persistent lack of involvement of native young offenders in the Alternative Measures Program.*[28]

Our research shows that:

> *Native young offenders are under-represented in pre-conviction community programs such as Alternative Measures, and over-represented in post-conviction programs such as community service orders, probation orders and pre-institutional fine option program.*[29]

The statistics indicate that the Alternative Measures Program accounted for 33.5% of non-Native young offender new cases and only for 11.1% of Aboriginal young offender new cases.[30]

Regardless of what explanations might be offered for these statistics and observations, Aboriginal young offenders appear to be under-represented in the more favourable dispositions and over-represented in the more disfavourable dispositions. The result is a significant over-representation in the incarcerated young offender population.

Female offenders, in addition to having to go through the same processes and procedures as male offenders, also suffer the inequities of being a minority group within the criminal justice system. Because of their small numbers, they tend to be overlooked in terms of their needs. Program resources specifically directed at those needs are also overlooked. The inequities and over-representation related to the Aboriginal subgroup are magnified for Aboriginal women. Where

> *Native offenders represented 28.6% of the total admissions to Alberta adult correctional centres for 1989, female Native offenders represented an even higher proportion (44.6%) of female admissions.*[31]

The inequities imposed on Aboriginal offenders continue during the course of their incarceration, with the result that their over-representation increases at this stage. Although it has been stated

> *that correctional services have no direct control over the number of offenders who are placed in their custody,*[32]

the impact on Aboriginal offenders is not neutral.

Although seemingly minor considering the length of time to which it refers, the length of time spent in jail by fine defaulters is substantially different for non-Aboriginals and Aboriginals:

> *Non-Native fine default offenders spent only 7.3% of their aggregate sentence length in custody compared to 14.3% for Native fine default offenders.*[33]

The difference amounts to 1.2 days, or 1.9 days compared to 3.3 days. Similarly, the overall statistics for time spent in custody indicate that non-Aboriginals spend less time in jail than do Aboriginal offenders:

> *for Native offenders the average length of time in custody was 34.2 days and for non-Native Offenders it was 31.3 days.*[34]

These differences are quite consistent and appear in remand periods as well. The end result is that Aboriginal people generally spend more time in custody than non-Aboriginals.

Young offenders statistics show similar differences:

- Aboriginal males spend a longer time in custody (94.4 vs. 92.8 days)
- Aboriginal males get longer aggregate sentences (167 days vs. 143 days)
- Aboriginal males spend proportionately less time in custody (56.6% vs. 64.8%)
- Aboriginal females spend a longer time in custody (60.7 vs. 57.1 days)
- Aboriginal females get shorter aggregate sentences (90 vs. 94.5 days)
- Aboriginal females spend proportionately more time in custody (75.9% vs. 60.4%)[35]

Even when the statistics favour Aboriginal young offenders, other factors help to produce the same end result: Aboriginal young offenders spend a longer time in custody than non-Aboriginals.

It has been difficult to consider federal inmates and early release opportunities because the National Parole Board is unable to provide specific statistics for Alberta. However, when data provided for the Prairie Region are applied to Alberta, we must still arrive at the conclusion that a systemic bias operates to the disadvantage of Aboriginal offenders. Data show that

> *Natives under Federal jurisdiction in the Prairie Region have had a lower grant rate for both day and full parole:*

	Day Parole	*Full Parole*
Aboriginal	*46%*	*19%*
Non-Native	*52%*	*28%*[36]

The effect of this difference can be seen in supervision statistics in Alberta:

> *At the end of June 1990 a total of 657 Federal offenders were under supervision on Alberta Community Corrections caseloads. Of those 657 offenders, 17.4% (114) were Native and 82.6 (543) were non-Native.*[37]

When these figures are further analyzed by type of release, we see additional significant differences emerge;

	Day Parole	Full Parole	Mandatory Supervision
Aboriginal	21 %	31.6%	47.4%
Non-Native	17.1%	54 %	28.9%

Clearly, the most desirable release type (full parole) favours non-Aboriginals while Aboriginals are over-represented in the least favourable release type (mandatory supervision).[38]

The issue of referral for detention hearings is one which was brought to the Task Force's attention during our visits to penitentiaries. Statistics provided to us by the National Parole Board indicate that while 5% of non-Aboriginal potential releases on mandatory supervision are referred for detention hearings, 10% of

Aboriginals at the same point are referred for such hearings. There is no difference in the detention rate once referred

> *but because of the higher incidence of referral 2.2% of all non-Native referrals are detained and 4.5% of all potential releases of Native offenders result in a detention order.*[39]

Even after release, there are indications that Aboriginals do not fare as well as non-Aboriginals:

> *When a post-release decision is required of the Parole Board - Natives receive negative decisions more often than non-Natives. When they are under mandatory supervision there is no difference.*[40]

This means that when Aboriginal inmates receive a day or full parole, they are more likely to be returned to incarceration when their behaviour requires a referral to the National Parole Board. The statistics do not indicate whether or not the recommended decision from the supervisors varies between Aboriginal and non-Aboriginal parolees.

Setting the stage for the discussion of corrections, this overview shows clearly that Aboriginals in conflict with the law are at a disadvantage when they proceed through the Courts and into the Correctional Services.

Term of Reference:

Corrections 6 (b)

To examine existing policies and practices to determine whether there are any discrepancies between Indian and Metis and non-Indian and non-Metis people respecting

(i) prisoner classification, case management techniques, release criteria and the availability of programs to Indian and Metis people while in custody, and
(ii) the criteria for entry to community release programs and the rate of early release of Indian and Metis people.

Remands

The task force has been told that accused persons who are held in custody on remand are generally detained in maximum security facilities.

Individuals on remand are housed in various facilities throughout the province. Aboriginal people are housed in remand facilities where minimal programming is available. We have observed that they often stay on remand for extended periods of up to six months while awaiting trial, and up to a year and a half awaiting appeals to the Court of Appeal and the Supreme Court of Canada. This situation prompts Aboriginal people in particular to prefer to enter a guilty plea rather than to wait for the outcome of a trial. For example, the Edmonton Remand Centre has an overall maximum security designation. Inmates are strictly monitored and have very little opportunity to participate in programs that offer education or productive activities. Visiting privileges are severely limited. In particular, we note that the

Edmonton remand centre has a limited number of phone lines for booking visits. Aboriginal people are often deprived of visits because their visitors cannot get through on the telephone to make an appointment. Women are housed in the Edmonton remand centre in two units. Within these units women, whose charges range from shoplifting to murder, mix and mingle. The exercise facility in the Edmonton remand centre is limited.

It is our view that remand facilities should be reserved for medium and maximum security individuals. Incarceration of individuals who require minimum security to ensure attendance at their trial should be a very last resort. Attendance centres in urban areas and community supervision in rural areas should be considered as viable alternatives. These provisions must, of course, have community support to be effective.

We have been told that accused persons are detained in medium to maximum security facilities because the provincial Solicitor General's Department responsible for the housing of remanded prisoners takes an Order from the court to remand in custody to mean that the individual should be detained in medium to maximum security, and because a minimum security designation is not available. It is our view that, when the court remands an Aboriginal person into custody, the court should consider making some determination for security requirements. In addition, the courts, the provincial Department of the Attorney General, and the Department of the Solicitor General should meet to discuss the appropriateness of current remand practices within the Solicitor General's Department with a view to determining whether some individuals who are remanded into custody may be better housed in minimum security facilities. We acknowledge that the decision to determine security level has always rested with the provincial Solicitor General's Department. However, it is our view that a review, with participation by Judges and the Attorney General's Department, of the Solicitor General's Department's criteria for remanding Aboriginal inmates, would reveal that while Aboriginals require strict monitoring and an in-custody designation, they may only require minimum security designation within the correctional facility.

The Task Force Recommends:

6.5 **That all Aboriginal accused persons who are subject to lengthy remands (in excess of three months) be given access, at their request, to the same programming as sentenced offenders in the same security level.**

6.6 **That short term remanded accused persons be given access to urban life-skills programming.**

6.7 **That remand facilities such as the Edmonton Remand Centre not be used for individuals who require less than medium security control.**

6.8 **That the Solicitor General's Department review innovative remand procedures, for example, electronic monitoring and other restraint procedures that would allow an Aboriginal person to remain at home or in the home community.**

6.9 **That reporting centres throughout the province be used in lieu of "in custody remands" for minimum**

security offenders or that more extensive use be made of existing reporting centres.

6.10 **That Aboriginal persons on remand in correctional facilities be given adequate access to their community support system of family and friends while awaiting trial.**

6.11 **That Aboriginal communities be involved in bail release programs (see recommendation 6.91).**

6.12 **That a maximum time be established within which trials must be held during which people may be detained in custody pending final disposition of their charges.**

Prisoner Classification

Many Aboriginal offenders complain that they are assessed or classified as a greater security risk than they need to be. The Task Force on Federally Sentenced Women, "Creating Choices," recognized this difficulty and further held that assessment criteria for Aboriginal women need to be identified, distinct from those applied to Aboriginal men. The Task Force wrote:

> *Initially, Task Force members supported the concept of woman-based criteria for classification as suggested by previous studies but ultimately came to the conclusion that assessment to gain better understanding of a woman's needs and experiences is more appropriate than classification. This conclusion is based on the Task Force perception that classification maintains the focus on security and on assigning a security rating for the women. Assessment, on the other hand, looks at the whole spectrum of women's needs from a holistic perspective, including needs relating to programming, spirituality, mental and physical health, family, culture, and release plans. Through this assessment, staff can then respond to the constellation of needs by appropriate support and intervention strategies which also consider the protection of society and the reduction of risk.*[41]

These comments are equally applicable to male Aboriginal offenders. Employees of correctional facilities often told us that Aboriginal inmates are generally quieter, more passive, and pose less difficulty from a management point of view than non-Aboriginal inmates. Yet it has been pointed out that current methods of determining the likelihood of persistent dangerous behaviour of Aboriginal inmates are not culturally sensitive and do not take into consideration information from appropriate sources, such as Elders. The final report of the Task Force on Aboriginal People in Federal Corrections pointed out:

> *The current review by the Secretariat, C.S.C. and N.P.B. of the detention provisions could include an Aboriginal offender component, with specific recommendations on the application of the provisions to Aboriginal offenders and, where necessary, suggest other, more appropriate methods to determine the likelihood of persistent dangerous behaviour among Aboriginal inmates.*[42]

The assessment criteria used by the federal and provincial corrections services, which are used in part by the National Parole Board, seem to be based on:

A. circumstances surrounding the offence;
B. the individual's criminal record;
C. special needs including educational or program direction, for example, alcohol treatment;
D. motivation and success in changing behaviour effectively ;
E. community and family circumstances.

The many submissions from Native Brotherhoods received by the Task Force indicate that Aboriginal inmates perceive the "system" to be almost exclusively concerned with the offence and the individual's record. Little or no weight seems to be attached to personal factors. There appears to be no provision of time or method for examining the likelihood of someone being a danger to self or others aside from the specific record and offence. This perception forms the basis for the view of many Aboriginals that a long record, particularly one involving violence or failures to appear, will almost automatically prejudice that individual's position in the correctional system, be it before the National Parole Board or in applications for temporary release. When this matter was reviewed with officials from the federal and provincial corrections facilities we visited, it became clear that although units and cells are designated specifically for inmates entering the institution, which are used primarily to familiarize the offender with the correctional facility, its physical lay-out, staff and program content, insufficient time and effort are spent on assessing the Aboriginal inmate upon arrival. Input provided by individuals who are not part of the correctional system and information received by the correctional facility about the Aboriginal inmate's home, community, or personality is, in some cases, culturally insensitive. The process is rushed. Information gained may be misleading.

The Task Force acknowledges the different historical, legal, and cultural differences between Metis and Indian peoples. It is important that the corrections part of the system also acknowledge these differences. While in this Report, the term "Aboriginal people" generally applies to both groups, it is important to acknowledge that programs and institutions should provide for both Metis and Indian spirituality and culture by, for example, involving Elders. Institutions should provide cross-cultural training for staff. Staff and programs should reflect tolerance and acceptance of both cultures. While both Metis and Indian programs should be available to inmates, inmates should not be forced to participate in these programs.

The Task Force Recommends:

6.13 That the Correctional Service of Canada reassess the concept of reception programs in Alberta to allow for a more informal and personal evaluation and assessment of new Aboriginal inmates. Security designation should be based not only on written documentation but also on information obtained from staff-inmate interaction. Staff members should be oriented towards obtaining first-hand information based on their observations when they confirm the appropriate security designation. The time during which this is done can also be used to provide inmates with factual information about the Correctional Service of Canada and the institution. It is not possible to achieve this goal if inmates are not housed in a specifically designated reception area.

6.14 That Aboriginal inmates be classified as minimum to medium security unless it has been demonstrated that a higher security level is warranted.

6.15 That assessment criteria be reviewed to eliminate gender bias and bias against Aboriginals.

Release Criteria

Statistics clearly indicate that at the earliest opportunity, fewer temporary absences* or parole† are granted to Aboriginal inmates than to non-Aboriginal inmates. It is acknowledged that these differences often reflect a higher incident of violence in the criminal record or failure to appear. We are not satisfied, however, that a criminal record which reflects violence or failure to appear provides sufficient ground for making such a determination. With respect to Aboriginals, records of failure to appear may not reflect accurately the individual's likelihood of adhering to temporary absence or parole conditions nor necessarily dictate an appropriate security level. We have heard that many Aboriginals fail to appear because of distance, lack of transportation, confusion about the requirement to attend, and a general difference in attitude towards time. Non-Aboriginals who fail to attend are viewed by the court as intentionally avoiding their obligations to the criminal justice system. It may not be appropriate to make the same assumption when dealing with an Aboriginal person.

The Task Force has been told on several occasions that all inmates who require psychiatric assessment in order to be considered for early release are required to undergo the same assessment process as non-Aboriginals. Aboriginal inmates complain that the assessments are fundamentally discriminatory because they are based on Euro-Canadian tradition. The psychometric tools used have no Aboriginal cultural content even when they are said to be culture-free or culture-fair. The assessors are invariably non-Aboriginal and the standards of comparison against which judgements and assessments are made are virtually always non-Aboriginal in source and content. Inmates have expressed the opinion that these circumstances work to their detriment and operate as a source of systemic discrimination leading to fewer Aboriginal inmates obtaining early release than non-Aboriginals. Statistics support their view. The Task Force is of the view that psychiatric assessment procedures could be a contributing factor to differential release treatment. The Native Brotherhood of the Edmonton Institution made the following reference to the experience of Aboriginal people within the federal corrections system:

> *The overall deficiencies and invalidity of the 'professional assessment' made at the Regional Psychiatric Centre (R.P.C.) is the cultural and racial clash of non-Native professionals 'assessing' the mental processes of a Native person with non-Native means. The cultural beliefs and values of a Native differ sharply in contrast to a non-Native and an inevitable*

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*30.5% Aboriginal vs. 69.5% non-Aboriginal - see Statistical Data Report, page 112)

†(46.6% for Aboriginals vs. 52% for non-Aboriginals - see Statistics reported on page 2 of the National Parole Board's letter to the Task Force, August 28th, 1990)

> *outcome is that the non-Native professional will diagnose a certain behaviour as 'abnormal' while the behaviour itself is perfectly normal in Native culture. The culture and racial contradiction can reflect negatively upon the Native person when appearing before the National Parole Board.*[43]

The Task Force Recommends:

6.16 That the provincial Solicitor General's Department and the Correctional Service of Canada make a concerted effort to ensure that assessment opportunities with Aboriginal cultural content or reflecting an Aboriginal world view (both Indian and Metis) are available to Aboriginal inmates who wish to undergo Aboriginal culturally appropriate assessments, and that these assessments be conducted by Aboriginal assessors.

6.17 That the National Parole Board and Temporary Absence Committees review criteria for release and discuss the practical implications of these criteria with respect to Aboriginal lifestyles and culture.

Case Management Techniques

Native Counselling Services of Alberta have stated that:

> *at the time of admittance to any correctional institution, the offender is incapable of developing any type of case plan. Yet this is normally when the inmate is required to make choices about his future in the institution. The concept of working towards a long-range plan may also be foreign to the Native inmate, since much of his life experiences may have been based on day to day living. Another barrier experienced by Native inmates is their limited academic skills, and as a result often have a poor understanding of the intricacies of release programs such as day or full parole...Native offenders require a better orientation to institutional expectations that are placed on the offender while incarcerated.*[44]

We have noted that, for example at the Grierson Centre in Edmonton which is an Aboriginal-focused corrections facility, inmates are encouraged to participate in the case management process over a long period of time. The process itself appears to be very flexible. Native Brotherhoods have expressed the concern that the case management process is but a game wherein the rules are set by the institution. The Aboriginal inmate merely plays along. Aboriginal inmates who do not feel a part of the plan or who are executing a plan merely to satisfy the administration are not likely to be affected in a constructive manner. This observation was well described in the Brief from the Residents of Grierson Centre:

> *Consistently, institutional programs are the means used to assess or discredit individual participation. The inability to articulate feelings does not mean they are not learning. A.A. is being used as a carrot rather than remaining anonymous. Positive programs are being run on a point system, again advancing the realization and need to manipulate the system. Not a good quality or attitude to hit the street with. The development of negative attitudes increases with these types of programs that institutions see as desirable in rehabilitation and integration into society. Thus undermining the spiritual and cultural efforts of Native participation.*[43]

Similar comments were received from the Native Brotherhood at the Bowden Institution:

> *Time and again there is two sets of policies, for Native and Non-Native programs, for example, Native programs have no recognition with the Case Management Process. Presently there are three positive programs, they are, the Elders*

> *program, Family Life Improvement Program, and the Bow Nations A.A. Group.*[45]

It is apparent from these comments that Aboriginal inmates perceive on the one hand a need to participate in programs which have "recognition with the case management process" and on the other hand, a need to appreciate the value of Aboriginal programming which has not received such recognition. Effective programming without both recognition by the institution and participation by inmates is useless. Programming that is recognized by the institution and receives participation only because an inmate "has to" participate is also useless.

The case management process is documented on specific forms which are completed according to instructions found in manuals and directives. Generally, it is the view of Aboriginal people that forms and instructions are generated from the non-Aboriginal point of view. It would appear that some sources of information, such as Elders and facts of major importance to Aboriginal inmates, have not been recognized in the instructions. As a result, bias could enter into the process because of failure to include these important sources and facts. The consequence to inmates would be that decisions are made based on incomplete information. All documentation procedures must be reviewed to ensure that this potential bias does not occur. Where it is found, it must be eliminated.

The Task Force Recommends:

6.18 That documents used in the case management process be examined for cultural sensitivity and amended where necessary.

6.19 That the case management procedure be reviewed to give Aboriginal inmates more time and more effective participation in the process.

Community Release Programs

In some communities we visited, Aboriginal groups with an interest in community justice expressed a desire to become involved in the parole or temporary absence process. They wish to be advised of releases made to their communities and they wish to become involved in assisting their community members in becoming reintegrated into the community. In many cases these community groups had little or no information regarding the parole or temporary absence procedures or constraints.

The following views on these issues were expressed to the Task Force:

> *The general consensus among the Native prison population at Edmonton Institution is that the non-Native decision makers of the National Parole Board do not understand our distinct way of life and therefore lack the objectivity required for equitable, quality decisions that have such a substantial impact on our lives.*[47]
>
> *Parole and early release programming is largely and readily available to urban rather than rural areas. The reason being availability of employment, lack of facilities and programs to accommodate native parolees and sadly, a lack of supportive interest by native communities at large. Native participation on National Parole Boards would bond a greater line of communication with parole applicants and the board.*[48]

We had the opportunity to meet with representatives of the National Parole Board and to observe National Parole Board hearings. The hearing process includes the provision of written materials to National Parole Board members in advance of hearings, followed by an opportunity at the hearing for Aboriginal inmates and their caseworkers to make representations to the National Parole Board.

Aboriginal inmates frequently expressed the concern that the police had a very large part to play in the decision made by the National Parole Board or Temporary Absence Committees. Aboriginal inmates believed that police recommendations in these cases were almost always negative. In almost every community, police representatives said that they objected rarely to release and that police participation was minimal in any event. We have heard that the National Parole Board and Temporary Absence Committees view the role of the police to be very minimal and often pay little or no heed to the representations made by the police, on the assumption that these representatives would be negative in any event.

We also noticed that Aboriginal inmates expressed concern about receiving insufficient notice of the date and time of their National Parole Board hearing. Based on information received during visits with the National Parole Board and institutions, we determined that Aboriginal inmates are generally advised of the week during which the hearing will take place. There is no guarantee that they will be advised of the time of the hearing. It is of assistance to the National Parole Board to have representations made to it in writing or in person by individuals speaking at the request of the inmate. For example, Elders, parents, employers, friends, or relatives may have information of value to the National Parole Board. The Aboriginal community in general or the band council may also wish to make representations from the Aboriginal community's point of view. This process should be encouraged and opportunities for participation should be made available.

We note that the hearings held by the National Parole Board are not considered to be public hearings. We have been advised that the federal government is reviewing this process. It is our view that it is in the interest of the National Parole Board and the Aboriginal inmate whose release is under review that hearings be public. Representatives of the Aboriginal community or the community in general, as well as friends, relatives, potential employers, or other individuals who may have an interest in the determination, should be given access to National Parole Board hearings. A free exchange of information can only benefit the community and facilitate the acceptance and support that the inmate requires from the community upon release.

Aboriginal inmates have expressed concern that Elders and Aboriginal psychologists are not granted the same status as non-Aboriginal professionals. While the results partially support this contention, it cannot be said that the individuals themselves are discredited by the National Parole Board. Rather, it appears that the Board's judgement of appropriate Aboriginal community support may not take into account the Aboriginal lifestyle. It also appears that the Board's requirement that the inmate have participated in certain programs, with acceptable results, is inconsistent with the Aboriginal holistic way of dealing with personal problems.

We feel strongly that, if the National Parole Board had a permanent office in Alberta and sat regularly in the correctional facilities that house Aboriginal inmates, the public's knowledge of and access to the Board would increase considerably. Aboriginal inmates from Alberta are more likely to be understood by Aboriginal members of the National Parole Board resident in Alberta. It is our view that it would assist both the Board's work and the inmates if applications for release were reviewed by Board members from Alberta.

We have been told that the temporary absence process used by the provincial government does not allow the Aboriginal inmate any access to the decision-maker either at the first instance or at an appeal. Again, it is our view that the individual making the decision as well as the inmate would benefit from a procedure allowing the inmate to make representation directly to the person making the decision, bringing to the attention of the person or panel any and all information the inmate feels may be pertinent or relevant to the decision. The current temporary absence program is cold and impersonal, and not conducive to the application of cultural sensitivity required of decision-makers in this process. It often affects the Aboriginal offender by causing helplessness combined with a sense of lack of control in the system.

Where possible, the National Parole Board and Temporary Absence Committees should employ Aboriginal individuals to review applications brought by Aboriginal inmates whose intention is to return to a reserve or Metis settlement or predominantly Aboriginal community.

We have been told that the National Parole Board will make translators available to applicants who do not speak one of the two official languages. However, it is apparent that Aboriginal inmates are not made aware of this fact in advance of the date set for the hearing. This omission often results in confusion at the time of the hearing or in the applicant's proceeding in the absence of an interpreter only to "get the matter over with." It is our view that the National Parole Board and Temporary Absence Committees should advise inmates in advance of their hearing that a translator is available even if only as a form of insurance or additional assistance to the inmate.

It is important that Aboriginal family life be recognized as a significant source of support. The Aboriginal "family" must be recognized as a much broader concept than the western European family. The Aboriginal extended family includes aunts, uncles, cousins, and other relatives who are often as close as or closer than brothers and sisters and parents in the western culture. This fact must be recognized and the programs and privileges available to Aboriginal inmates must take this factor into account.

The differing concepts of "family" were addressed by many presentations to the Task Force including the presentation from the Oblates of Mary Immaculate Justice and Peace Committee (Grandin Province) when they recommended:

> *That the Task Force recommend that in policies which include a criteria re family relationship that the extended family relationships rather than the nuclear family relationships be determinant.*[49]

An issue which has been brought to the attention of the Task Force on a number of occasions is the apparent bias of correctional institutions when Aboriginals make requests for temporary absences to attend family funerals. The Social Justice Commission of the Roman Catholic Archdiocese of Edmonton noted in their brief that:

> *The funeral traditions of the native communities need to be known and respected so the decisions which most assist the native prisoner's grieving process are made.*[50]

In Aboriginal extended families, relationships do not correspond to Euro-Canadian nuclear family relationships. Yet, they are interpreted in Euro-Canadian context. English words to describe relatives in the Aboriginal community are often inaccurate. The issue, as described by Aboriginal inmates, is that too often they are denied an opportunity to attend the funeral of a close family member. They state that if the nature of the relationship were viewed from the Aboriginal perspective, quite a different interpretation and/or different decision would be warranted. Additional considerations which lead to negative decisions are, for example, the grieving process, which is different and longer than that of the dominant Euro-Canadian culture, and the location of a funeral, which is sometimes distant from institutions and facilities such as holding cells which may be required. Expenses to the correctional organization such as travel and escort costs are also considered in the decision-making process. The Elizabeth Fry Society of Edmonton observed in their Brief that:

> *Women in prison need to have the opportunity to attend funerals and receive support from 'family' while in prison. Prison officials should accommodate the wishes of native women to attend funerals as much as possible and to provide surveillance in a manner that is as unobtrusive as possible.*[51]

These comments are equally applicable to men.

The Task Force is of the opinion that Aboriginal inmates often experience discrimination when their request for temporary absence for a funeral is denied. The Task Force concludes that the criteria applied are inappropriate and must be corrected.

Community Facilities And Supervision

Several submissions to the Task Force addressed the issues of community facilities and supervision. For example:

> *The Community Corrections Program could become a viable alternative to incarceration for many Native offenders. However, the program currently offered has limited value to the Native communities, especially for rural or isolated communities.*[52]

> *There must be more of an active interest displayed by M.A.A./I.A.A. leaders and organizations in the community to openly activate the delivery of community based programs in assimilation with institutional programming for the continuance of the unique needs of Metis and Indian people of Alberta. The process of rehabilitation and crime prevention is ongoing.*[53]

In their Brief, Native Counselling Services of Alberta noted that:

> *Offenders are neither monitored adequately, nor provided with appropriate guidance to change their behaviour.*[54]

They further noted that, if the needs of young people are to be met adequately, there must be provision for the treatment of the entire family. Currently, and notably, there are only a few programs in operation that take a holistic approach to the family. Many organizations told the Task Force that there were not enough appropriate community-based half-way houses, closed custody homes, open custody homes, or community facilities in general for Aboriginal offenders. Aboriginal communities have come to view Aboriginal offenders as the community's responsibility. Their objective is to involve the Aboriginal community in creating an atmosphere conducive to the reintegration of offenders into the community.

The lack of half-way houses for women within the correction services was identified on numerous occasions. Indeed, there seem to be no facilities with programming exclusively for Aboriginal women. We encourage the development of half-way houses which offer improved access to the children of the inmate, and which encourage the development and improvement of parenting skills.

In every institution we visited, we were told by Aboriginal inmates that they do not wish a separate institution or to be segregated within the institution from non-Aboriginals. Nevertheless, it is clear that community-based facilities with programming oriented to Aboriginals would have a positive effect on Aboriginal inmates.

We have observed that, particularly in the remote Northern areas of Alberta, interim release options and sentencing options are restricted by the absence in communities of appropriate and trained supervisors and facilities. Denial of bail, release to urban centres rather than to an inmate's own community, and breach of conditions because of a lack of support are but a few of the difficulties experienced by the Aboriginal offender.

The Task Force Recommends:

6.20 That the the Correctional Service of Canada and provincial Solicitor General's Department establish liaison with Aboriginal community groups who have indicated an interest and are willing to become involved in the parole or temporary absence program, to facilitate the involvement of Aboriginal communities in, for example, supervision or sponsorship of release.

6.21 That the Correctional Service of Canada and the provincial Solicitor General's Department establish liaison with Aboriginal community-based agencies to provide information about the parole or temporary absence program and to facilitate the Aboriginal community's involvement with Aboriginal correction facilities and with community correction facilities.

6.22 That more Aboriginal individuals be appointed to the National Parole Board.

6.23 That hearings of the National Parole Board be held in public.

6.24 That the National Parole Board advise Aboriginal inmates at least seven days in advance of the date and time of their hearing.

6.25 That the National Parole Board advise Aboriginal inmates that a translator will be made available at their request.

6.26 That National Parole Board members receive initial and regularly recurring cross-cultural training relating to Aboriginal culture and society.

6.27 That the National Parole Board sitting in Alberta have Alberta members and sit in all facilities that house Aboriginal inmates.

6.28 That the National Parole Board adopt the goal of ensuring that Aboriginal residents of Alberta be heard by Alberta members of the Board.

6.29 That Aboriginal spirituality be formally recognized as one of the criteria in the release policies of the National Parole Board.

6.30 That National Parole Board hearings involving Aboriginal individuals be informal, and apply Aboriginal spiritual practices, both Indian and Metis, where appropriate. A sweet grass ceremony, Aboriginal art on the walls, seating in a circle, and allowance for informal dress may assist the information-gathering process.

6.31 That the National Parole Board, Temporary Absence Committees, and the provincial and federal Solicitor General's Departments, recognize in policy that the Aboriginal concept of family is not the same as that of non-Aboriginals, and that the concept of extended family be included in all programming and decision making.

6.32 That the recommendations regarding the urgent need for half-way houses in Alberta for Aboriginal women, made by the Task Force on Federally Sentenced Women (page 149), be adopted.

6.33 That assistance be given to local communities to develop and involve local residents in the provision of appropriate supervision of parole and temporary absence, and that supervisors be paid reasonably for their services.

6.34 That training be provided to members of the National Parole Board and Temporary Absence Committees to sensitize them to the nature of Aboriginal communities, norms, and Aboriginal spiritual healing practices.

6.35 That the National Parole Board and Temporary Absence Committees view an Aboriginal's participation in Aboriginal cultural and spiritual activities as an important contributor to change.

6.36 That, when applications are reviewed, made by Aboriginal inmates from Alberta whose intention it is to return to a reserve or Metis Settlement or predominantly Aboriginal community, the National Parole Board and Temporary Absence Committees be composed of Aboriginal members from Alberta where possible.

6.37 That the temporary absence process be reviewed by the Government of Alberta to ensure that an applicant receives due process.

Term of Reference:

Corrections 6(c)

To review existing correctional programs for both men and women to determine:

- *i.* ***the nature and content of programs for both young offenders and adult offenders,***
- *ii.* ***whether there is sufficient attention being given to the general needs and concerns of Indian and Metis People, including educational, personal development, drug and alcohol abuse and other programs of importance to the Indian and Metis people who are seeking to become more productive on release from prison, and***
- *iii.* ***whether there is sufficient attention being given to the special needs and concerns of Indian and Metis people in view of their cultural and spiritual heritage.***

Nature And Content Of Programs

> *Presently there is over emphasis on behavioral change through the use of negative reinforcement rather than a positive appraisal of human values and the promotion of self-esteem.*[55]

Many groups who made submissions to the Task Force commented on the role of programming within correctional facilities. The Elizabeth Fry Society of Calgary stated simply that:

> *The focus of all housing, programs and services provided shall be to rehabilitate the individuals involved - not merely to incarcerate.*[56]

The Task Force has been impressed by the variety and quality of programs offered in the many correctional facilities in the province, with programs ranging from academic education to personal development. Moreover, we have been impressed by the obvious dedication of most staff, and with their commitment to meet the needs of Aboriginal offenders. We are concerned, nevertheless, with the apparent lack of coordination. Many programs designed to teach inmates a trade or vocation seemed to be out of touch with the needs of an Aboriginal in an Aboriginal community. Inmates at the Grierson Centre advised us that basic training and skills development should remain a priority. In our view, programs teaching cottage industries such as small engine repair and handicrafts, for example, silk screening, are appreciated by Aboriginal inmates and provide skills usable in Aboriginal communities. We encourage corrections staff members to investigate the types of training programs best suited to the individual Aboriginal inmate and the community to which he or she will likely return.

Urban life-skills seem to be lacking among many Aboriginal inmates. While there appear to be networks of Indian and Metis people within urban areas, there does not seem to be a structured program for identifying and addressing the particular support an Aboriginal will require in a large urban setting in order to cope with the larger society. Examples of information needed would be: how to obtain a driver's license, what Aboriginal organizations exist within the city to which the Aboriginal may turn for assistance, public transit, unemployment insurance procedures, and support systems that may be available in the urban community. The programs that do exist seem to be tacked onto the end of a sentence. They appear to be somewhat rushed, and lack real emphasis on particular difficulties faced by Aboriginal people.

We cannot ignore that in provincial institutions the average stay of an Aboriginal inmate is a mere thirty days. We acknowledge that it is extremely difficult to provide programming that will make a significant difference within thirty days. It is our view that extensive programming within provincial institutions should focus on long-term offenders and that offenders who are expected to stay for short periods of time within provincial institutions should be engaged in programs which orient them to assistance within the community upon release. Perhaps a basic urban life-skills course should be developed by Aboriginals for delivery within correctional facilities.

In Northern Ontario, some Ontario Provincial Police detachments have what is commonly called the "10/11 program." If an Indian or Metis person is found to be intoxicated in a public place, he or she is not charged for the first ten offences. The offences are recorded by the police. If an eleventh offence is committed, the accused person is arrested. The sentencing court is advised of the circumstances, and an appropriate sentence involving either treatment or incarceration is imposed. We have been advised by the Ontario Provincial Police that this program is successful. Frequently, the eleventh offence is either not committed, or if committed, is not detected, because the community accepts responsibility for the offender in some way.

It is with the Ontario example in mind that we are of the opinion that legislation should be considered which would allow an Aboriginal to accumulate sentences of less than six months until they are, in total, in excess of six months. Incarceration would only be imposed when a total of six months had been exceeded. Legislation could be accompanied by a direction that no Warrant of Committal be issued until sentences of incarceration in excess of six months have been accumulated. An Aboriginal person would only be arrested and incarcerated when the Warrant of Committal is issued. This set of procedures would allow for correctional authorities to be less lenient in granting temporary absence or early release. The offender would be able to participate in institutional programs, which, because of their longer duration, might be more effective. The "revolving door" might be avoided, which at present and at best, appears to be merely an inconvenience to Aboriginal people and has no real positive and lasting effect. It is recognized that this proposal may lead to a "widening of the net" and could result in six months becoming a minimum sentence. It would, however, remove the so-called, short, sharp sentence, which is usually more short than it is sharp and which is of questionable deterrent or rehabilitative value to the offender.

We note that in some provincial institutions, women have little or no live-in access to their infant children. The family is a very important influence in the life of an Aboriginal. Access to infant children by new mothers, particularly Aboriginal mothers, has been noted to be a stabilizing influence and rehabilitative factor. The Task Force had an opportunity to speak with a new Aboriginal mother who had her child while incarcerated near Edmonton. Shortly after the birth of her child, she absented herself without leave to visit the infant. As a consequence, she was immediately transferred to an institution in southern Alberta. The Task Force on Federally Sentenced Women identified the same issue as a concern, as did the Elizabeth Fry Society of Calgary:

> *There is a lack of provision for incarcerated mothers to have any access to their newborn infants, while in prison in Alberta. Alberta is now one of the few western provinces that does not have provision and/or facilities ready to accommodate such access. Saskatchewan, at Pine Grove, developed living accommodations for such access, after government-funded research pointed to the positive outcomes for mother and child to be gained by consistent interaction.*[57]

A serious concern for this Task Force is the obvious lack of effective alcohol and drug abuse counselling. The Poundmaker's Lodge observed in its Brief that:

> *In most Native communities across Canada, 80 percent of the people have a problem with alcohol. Sending our people to jail, or placing them on probation, rather than sending them for treatment, only enables Natives to continue to hurt themselves and their families.*[58]

For a long time now, it has been generally accepted that the single greatest contributing factor to criminality among Aboriginals is alcohol and substance abuse. Statistics presented in the submission for the Poundmaker's Lodge show a disproportionately high number of Aboriginals in jail because of offences related to alcohol and substance abuse:

> *With respect to the conviction of Native people who have committed alcohol related offences, little has changed since the release of the Kirby Report - alcohol and the law is still a major problem for Native people. For example, between January 1, 1989 and December 31, 1989, 1,417 Native people were sentenced due to offences under The Liquor Control Act compared with 764 non-Natives (65% Native versus 35% non-Native). Moreover, 21% of all Native offenders versus only 5% of all non-Native offenders were sentenced due to offences under The Liquor Control Act, (between January 1, 1989, and December 31, 1989).*[59]

The question must be raised of whether alcohol and substance abuse programs should be the primary focus for programming in the case of Aboriginal inmates. Anecdotal reports and the position expressed by Poundmaker's Lodge suggest that if alcohol-addiction can be overcome, all other difficulties facing an individual or a community will be manageable and can be overcome. There does not appear to be a concerted effort to ensure that alcohol treatment in federal and provincial correctional facilities is effective. It has been suggested to the Task Force that all Aboriginal inmates be provided with the opportunity to attend a residential treatment program of six months' duration. Clearly, such a program would be more appropriate in the case of federally sentenced inmates. Recently, Poundmaker's Lodge has initiated a program at the federally-operated Edmonton Institution. The success of the program has yet to be determined. However, there are high hopes that an alcohol treatment program within the institution, residential in nature and based on Aboriginal culture, will be more acceptable to Aboriginal inmates than conventional programs, and thus be more successful. In provincial institutions where the average stay is thirty days, a somewhat different approach is required. We have been advised that in some provincial institutions, inmates have no access to alcohol and substance abuse programs because programs are not offered continuously or because of the limited length of their sentences. The Solicitor General contracts for beds in treatment facilities, but too few beds to meet the need. Currently, there is no recognized method for assessing the effectiveness of alcohol and substance abuse treatment programs in correctional facilities or even of those offered by facilities such as Poundmaker's Lodge. Research and evaluation must be conducted to ensure that programs are effective.

It is evident that a different approach must be taken with respect to alcohol and drug abuse counselling for Aboriginal people, and that concepts of Aboriginal spirituality and Aboriginal lifestyle must be incorporated. Poundmaker's Lodge stated:

> *For many years, the tragic consequences of Native people's encounters with alcohol and drugs received little attention - treated as if it was an unconquerable result of a people unable to adjust to a dominant alien society. Treatment and rehabilitation based mainstream programs had little impact on the problems.... There also came the realization that the extent and intensity of the alcohol and drug problem for Native people was the result of critical differences between Native and non-Native people, both individually and as a group, and that effective treatment and rehabilitation would require recognition of those differences.*[60]

In our view, it is imperative that alcohol and drug abuse programs for Aboriginal people bear this principle in mind.

The Task Force Recommends:

6.38 That the government consider enacting legislation which provides for actual incarceration of Aboriginals only when incarceration sentences total six months or more.

6.39 That every major correctional institution in Alberta have an alcohol and substance abuse treatment program aimed at Aboriginal inmates and designed to attract participation by Aboriginal inmates. These programs should be of sufficient

duration and be offered regularly so that they are available to all inmates serving substantial sentences within the correctional institution.

6.40 That correctional facilities provide culturally sensitive programming including programs such as alcohol and substance abuse treatment, employment readiness, physical and sexual abuse survival, life-skills and other relevant training.

6.41 That the provincial Solicitor General's Department and the Correctional Service of Canada identify programming required specifically for Aboriginal women and that such programming be implemented in all Alberta facilities housing Aboriginal women.

6.42 That the federal and provincial governments establish funding for programming as a priority, and direct its attention to community release programs and prevention programs.

6.43 That the feasibility of evaluating the effectiveness of current alcohol and treatment methods be reviewed.

6.44 That correctional facilities provide live-in arrangements for infant children of new mothers incarcerated in provincial correctional institutions.

Aboriginal Liaison Workers/ Program Coordinators

In their Brief to the Task Force, the Native Brotherhood of Edmonton Institution said about native liaison workers:

> *The input of the Liaisons into the case management process is unnecessarily limited to, for the most part, aiding Native prisoners at parole hearings. Insofar as providing case management assessments, both the Liaison and the Elders are limited to the position of ex-officio of the Case Management Team (C.M.T.). The reality is that the Elders and the Liaisons should constitute the assessors of the C.M.T., for these individuals know and understand the Native prisoners in a manner that the non-Native C.M.O.'s could only in the rarest instance.*[61]

The Brief submitted to the Task Force by Native Counselling Services of Alberta (N.C.S.A.) provided insight into the role of liaison workers:

> *It was our experience, that although these positions provided unique services, they were never allowed to reach their fullest potential. The liaison officers had no designated role within the center, apart from supervising the Native Brotherhood Program and the Elders Services contract. Without a clear mandate the staff were subject to limitations placed on them by the Administration, Security and Programs staff. The success of the services was always hinged upon how receptive and flexible those institutional administrators were. This often led to frustration and conflict between the liaison officer and the center staff. Apart from the operational problems, it was important for inmates to access a worker not identified as a staff member of the institution. Native inmates would enlist the help of the liaison officers to assist in mediating disputes with case workers or to utilize the network of services N.C.S.A. provided. This was particularly important for the offenders attempting to maintain contact with their families or communities. The liaison officers also assisted the Native Brotherhood by acting as*

> *a resource, for completing community contacts, and mediating between the administration and inmates. The Liaison Officer was also an important contact for the institution and the native Elders. As the program expanded, these officers became responsible for contacting the elders, arranging their visits to the institution, and paying for their services.*[62]

The Task Force is of the opinion that the need for an Aboriginal Liaison/Program Coordinator has been established, and that such a position, or such positions, will be of value to both the institution and the Aboriginal inmate.

The provincial and federal governments have initiated programs for the hiring of persons to assist Aboriginal inmates within the correctional facility. The federal position title is Native Liaison Officer. The Alberta title is Native Program Coordinator. The positions are contracted out by the federal government to an outside agency such as Native Counselling Services of Alberta or Poundmaker's Lodge, whereas the provincial government employs Aboriginal program coordinators within the staff complement of the provincial Solicitor General's Department. There are advantages and disadvantages to both approaches. On the one hand, individuals who provide the service on a contract basis are viewed as having more independence, and as more able to speak and advocate on behalf of Aboriginal inmates. Public service staff members are seen as having been conscripted by "the system" and are viewed as being less independent. On the other hand, we have heard that workers who are in the institution on a contract basis are not taken seriously or are not given the status they require to effect change within the institution, whereas public service staff members can be provided with that status. Public service staff members tend to be more easily accepted by the administration and more effective in their role as advocates. Regardless of the approach taken, it is crucial in our view that the individual hired for the position be a person who has the ability to advocate on behalf of the inmate, can establish and maintain liaison with the staff in the institution, and have status among and the confidence of staff in the institution. In part, it is the obligation of the correctional facility to give this person regular and routine access to the highest levels of administration. We have been told that the success of these positions is often dependent on the person who occupies the position. That is a simplification of the situation. The institution, its administration and staff, must make a concerted effort to create working conditions which allow the workers to carry out their responsibilities properly and effectively.

The Task Force Recommends:

6.45 That the provincial and federal Solicitor General Departments ensure that the position of Native Liaison Worker or Program Coordinator allows the individual in that role both sufficient access to policy makers, and an opportunity to advocate on behalf on individual Aboriginal inmates in an effective manner.

Elders Programs

In their Brief to the Task Force, the Residents of Grierson Centre presented a view shared by administrators and other inmates:

> *A resident elders program is viewed as having a desirable and positive effect on prison populations in general.*[63]

There are no institutions in Alberta which employ a full-time Elder. Most of the Elders are Indian. We met very few Metis Elders. As we noted, there is a distinct difference in culture, history, and spirituality between Indian and Metis persons. There was noticeably less opportunity for inmates in young offender centres and remand centres to have access to Elders at all.

A general comment, frequently heard from Native Brotherhood/Sisterhood groups, centred around three concerns which relate to Aboriginal inmates' feelings of identity. These concerns could be related to feelings of self-worth, so important in the change process and healing prospects of individuals.

The first of these concerns is the degree of recognition and status given to Elders by the institution. While it is acknowledged that respect and understanding for Elders by institutional staff and administrators have improved substantially in recent years, the Aboriginal inmates believe that Christian Chaplains and Elders are treated differently. The most frequently cited examples of different treatment relate to less freedom of movement for Elders within the institution, and a lower level of trust with which Elders are treated. The examples refer to details such as Elders having to be escorted in the institutions, not being able to draw a set of keys even to their own offices, being required to have their ceremonies and activities supervised either directly or indirectly, and having to submit to searches of their medicine bundles when they enter the institution. These restrictions or demands are rarely placed on Christian Chaplains who also provide services on a contract basis.

The second concern relates to the inability of the non-Aboriginal institutional administration and staff to understand that there is no essential difference between Aboriginal spirituality and culture. Aboriginal inmates have achieved certain gains in freedom of access and expression in the context of clearly spiritual concerns. There appears to be an institutional effort to distinguish between spiritual activities and expressions of culture associated with an Aboriginal way of life. When a specific request or item is not seen as clearly required for spiritual expression, it is subject to a far broader range of restrictions related to security of the institution. Examples might be restrictions on when Aboriginal inmates may wear a ribbon shirt and on what symbolic articles an Aboriginal inmate may possess besides medicine bundle contents.

The third concern is the general absence of a focal point for Aboriginal activities in institutions. Only in a very few instances was the Task Force shown a space in the institution which could be referred to as a "cultural centre" for Aboriginal inmates. In most cases, Aboriginal inmates shared space with non-Aboriginals, which made it extremely difficult if not impossible to prepare a space reflecting Aboriginal culture and offering Aboriginal inmates a high degree of comfort and familiarity in their spiritual and cultural activities.

The Task Force visited most of the provincial institutions in the province. We were struck by the large centralized facilities of more than two-hundred inmates with sophisticated and costly security hardware, and elaborate and well-equipped training facilities. For many inmates, the standards of accommodation and recreational facilities in the institutions are much higher than those in their home communities.

We have learned that Aboriginal communities and Aboriginal inmates would prefer inmates to be housed in their home communities. It is true that 60% of incarcerated Aboriginals give urban centres as their home address, in particular Edmonton and Calgary, while 40% name rural communities. However, instead of housing inmates from rural areas in large institutions, a more sensible approach to incarceration of this group would be to establish small minimum security facilities of twenty to thirty inmates, oriented towards alcohol and substance abuse intervention and community service in the Aboriginal inmate's home community. In their presentations to the Task Force, many Aboriginal communities indicated an interest and desire to become more involved with incarcerated Aboriginals. Placing correctional facilities within communities would provide for community involvement and an opportunity to become involved with and increase understanding of this component of the criminal justice system. In addition, inmates could stay close to home, and the cost of incarceration would be reduced. Excellent examples of such facilities are Footner Lake, the Kainai Facility on the Blood Reserve, the Westcastle Facility on the Peigan reserve, the Medicine Lodge Facility near Fort McMurray and the treatment facility for youths near St. Paul.

Throughout the research and visits, the Task Force received a clear and consistent message about Aboriginal spirituality. We were told repeatedly that drug and alcohol abuse and criminality are inconsistent with the Aboriginal way. Anecdotal accounts abound of dramatic shifts in behaviour, motivation and taking charge of one's life following a commitment to Aboriginal spirituality. We heard the same message from incarcerated inmates, released inmates, program managers, supervisors, and Elders. We also heard from individuals who have lived through the experiences. On the strength of these personal testimonials, the Task Force fully accepts the effectiveness of commitment to Aboriginal spirituality. We also accept that Aboriginal spirituality is an integral part of those intervention programs which are deemed successful.

The Task Force Recommends:

6.46 That every institution in the province which houses Aboriginal people, including remand and young offender facilities, should have the services of at least one full-time equivalent Elder. Where numbers warrant, there should be two Elders with pay.

6.47 That Aboriginal Elders within correctional institutions be provided the same status, freedom and independence that is granted Christian and other religious service providers.

6.48 That institutional administrators be open to a broader concept of Aboriginal spirituality and culture and be more receptive to the expression of Aboriginal heritage

by Aboriginal inmates in terms of religion, dress and cultural activities.

6.49 That Aboriginal community-based release facilities involve in their program development and delivery male and female Elders who are community members.

6.50 That a space within institutions be designated as a cultural centre for exclusive use by Aboriginal inmates.

Budgeting

The issue of budgeting for Aboriginal programs was brought to the attention of the Task Force by several presenters throughout the province. We were told that under current federal and provincial government contracting practices, programs and guidelines for program delivery are established mostly on an annual basis. Under such conditions, the provider of a program or the length or scope of a program can vary from year to year. This can destroy the continuity of a program and can cause inefficiencies in program delivery. For example, if one source provides a program in an institution in year one, and in year two the contract is let to a second supplier who must take time from the contract period to get to know the inmates and the institutional environment, a certain amount of the value of program delivery is lost. It was suggested by both agencies and public servants that the practice should change to allow for longer-term contracts to ensure continuity of program delivery and stability in the source agency.

From the Aboriginal inmates' point of view, budgeting at the institution level is problematic in that there is no readily identifiable budget set aside specifically for Aboriginal cultural pursuits. The consequence is that there is no opportunity to plan for the longer term. For example, program proposals from Native Brotherhoods are assessed on a case by case basis and in the context of demands from the larger inmate population and a limited budget base. Although the argument can be made that Aboriginal inmates benefit from expenditures on behalf of all inmates, the Task Force believes that there are real and specific program needs for Aboriginal inmates which should be funded separately, with the Native Brotherhood organizations having a major role in determining content and delivery.

The Task Force Recommends:

6.51 That funding for contracts for the specific provision of services for Aboriginals be reviewed. Many programs currently provided on an annual basis do not allow for sufficient time for the service providers to become familiar enough with the clientele and the institution to provide a consistent and effective service.

6.52 That a budget be allocated within the corrections budget, specifically for Aboriginal activities and programs. It is desirable that Native Brotherhoods be actively involved in the process of developing institutional priorities for Aboriginal programming and that they have input into the expenditure of resources allocated for these programs.

Community Initiatives

> *Native leaders can and should speak up for their own people.*[64]

The Native Brotherhood from the Bowden Institution viewed community involvement as important and made this suggestion:

> *Direct involvement with Native Organizations will only happen when a Native Advisory Committee is established. This would be similar in nature to a Citizens Advisory Committee. This committee would consist of members of the Indian Association of Alberta (I.A.A.), Metis Association of Alberta (M.A.A.), Native Counselling Services of Alberta (N.C.S.A.), respected Native Elders, John Howard Society, and other various Native resource agencies and peoples.*[65]

The Metis Association from the Bowden Institution said:

> *There are many areas of concern that have yet to be clearly identified and addressed. This must begin with involvement of the Metis/Indian inmates, C.S.C. staff, Metis/Indian community groups, and Solicitor and Attorney General Departments. In order to develop effective programs/services, both sides must begin to listen to each other ideas and concerns.*[66]

The Residents of Grierson Centre addressed the importance of community involvement:

> *A community support system should be available in all levels of applied justice.*[67]

The Yellowhead Tribal Council expressed the philosophy of participation most eloquently:

> *We all know what is behind us, Native Populations are increasing, the death ratios are higher in our communities, there are enormous alcohol related problems, and insurmountable incarcerations toward native people across Canada. There are so many problems that it makes our hearts weep, while enduring great amounts of pain thinking of them. But this has not stopped us from getting up each morning and greeting the sun, for each new day we see the sun there is hope. In order to move forward we must know and understand the past. We don't believe we have all the answers, but together we can correct many of the problems.*[68]

Daniel Beatty (Pawis) spoke about community responsibility:

> *Some of the problems which resulted in incarceration in the first place could very well be considered the community's fault. It is for this reason alone that Band Councils, Native political groups, Native media, and Native brotherhoods work in conjunction and face the fact that the community has an obligation in the process of an offender re-entering from prison. While the parolee/prisoner shoulders a great deal of the responsibility, the community must not be allowed to discard valuable opportunities out of ignorance.*[69]

In almost all of the Briefs we received from Aboriginal groups, we were told that the Aboriginal community is willing to shoulder at least part of the responsibility for protecting their community by means of the corrections process. As we have said, some communities are more able than others to become involved and all communities will require resources and training.

In rural areas, the Aboriginal community is well defined by settlement and band organizations. In urban areas, we had difficulty identifying specific Aboriginal communities or Aboriginal community groups. Very few representations were received. We appreciate the work of the Friendship Centres, particularly those in Edmonton and Lethbridge, who provided this Task Force with insight into the urban Aboriginal community. In urban areas, facilities and programs specifically designed for Aboriginals and run by Aboriginal groups appeared to be virtually non-existent. At the same time, there seemed to be a number of organizations in the inner-city areas of Edmonton, Calgary and Lethbridge which give assistance to Aboriginal people in specific areas of concern. However, there seemed to be some lack of coordination, information and general networking between these organizations. The police chief in Lethbridge expressed frustration that many of these organizations keep 9 - 5, Monday to Friday hours and are not available when problems develop. The criminal justice system as well as social service agencies might benefit from a multi-purpose facility in urban centres aimed at providing space and support for programs for Aboriginals. These programs could offer everything from recreational activities to housing, parenting courses, urban life-skills, and alcohol and substance abuse treatment, and could be used as reporting facilities for remanded Aboriginals and community crime prevention programs. The concept of a multi-purpose facility is in keeping with the Aboriginal holistic view of problem-solving. The Task Force views such a facility as having considerable potential for enhancing a feeling of community among urban Aboriginal citizens, and for assistance in program coordination.

The Task Force Recommends:

6.53 That the number of half-way houses, community minimum security facilities, open custody facilities and secure custody facilities be increased throughout the province.

6.54 That these facilities be designed for use as multi-purpose community-based facilities with, for example, a program to allow accused persons on remand to report to a designated facility.

6.55 That the goal be adopted of placing all minimum security serving prisoners in facilities in their home community for their entire sentence.

6.56 That representatives of the federal and provincial corrections services work with Aboriginal communities to explain the role of release-oriented correctional facilities and invite input from the communities with respect to program development and delivery.

6.57 That an urban cultural program centre for multi-purpose community programs be established in urban centres, which would encourage Aboriginals in conflict with the law and Aboriginals in general to become involved in their spiritual and cultural heritage. We suggest that this be a community initiative supported by the Correctional Service of Canada and the provincial Department of the Solicitor General.

6.58 That the provincial government strengthen the existence and advocate the use of home placement custody and mixed group housing custody as alternatives to traditional correctional facilities.

Complaints and Discipline Procedures

We have been told that many Aboriginal inmates view the current procedures for making complaints about staff or programming in correctional facilities as limited and ineffective. We note that there are procedures in place for the lodging of complaints by Aboriginal inmates. We have been told that institutional administrations consider the procedures very effective. We have, however, noted that for a variety of reasons, Aboriginal inmates often do not make use of the complaint procedure. They are reluctant to assert themselves in the system and generally behave passively in institutions. They are easily confused about the procedure, fear retribution if they complain, and frequently state that there is no feedback or effective investigation of their complaints in any event. The matter of complaint procedures within the criminal justice system is discussed extensively elsewhere in this report.

The Task Force had the opportunity to review the internal disciplinary procedures used by the federal and provincial correctional systems. In the provincial system, internal discipline is handled internally by staff members. In the federal system, internal discipline is handled internally by an independent chairperson. It is our view that internal discipline in the jail has a considerable effect on the length of time spent in jail, security level, and access to programs. In many cases, access to family visits and other benefits or "privileges" may be withdrawn for a time. In extreme circumstances, transfers between institutions are common.

We have reviewed Michael Jackson's report "Behind the Walls"[70] as well as writings by other authors who comment on the lack of natural justice in institutions. It is our view that the provincial Correctional Service Division should review its discipline procedure and provide for impartiality in the process. The common perception held by Aboriginal inmates that the process is nothing more than a "kangaroo court" instills no respect or trust in the system and breeds hostility and resentment. This perception colours the Aboriginal inmate's view of programming in the institution and is counterproductive to rehabilitation. There are, of course, many instances when discipline is required to keep order in the institution. The legitimate need for such measures should not be minimized.

We have been told by Native Brotherhoods that they do not know what the inmate's rights are within the disciplinary process. The same cultural traits that contribute to the misunderstanding of an Aboriginal person in court apply in the correctional institution. Aboriginal inmates are often shy or quiet. They do not maintain eye contact, and are not aggressive or assertive in defending themselves in the face of authority. We have been told that there is a reluctance on the part of Aboriginal inmates to become assertive during the disciplinary process out of fear of reprisal.

Due process is a term which is widely accepted by the criminal justice system and administrative agencies. Jones and deVillars in their book, *Principles of Administrative Law*, state that:

> *At the very least, the rule requires that the parties affected be given adequate notice of the case to be met, the right to bring evidence and to make argument.*[71]

The same authors comment:

> (a) *the tribunal is not required to conform to any particular procedure, nor to abide by rules of evidence generally applicable to judicial proceedings, except where the empowering statute requires otherwise;*
>
> (b) *there is an overall duty to act fairly in administrative matters, that is, the inquiry must be carried out in a fair manner and with due regard for natural justice;*
>
> (c) *the duty to act fairly requires that the person who is being examined and who may be subject to some penalty:*
>
> (i) *be aware of what the allegations are;*
>
> (ii) *be aware of the evidence and the nature of the evidence against him;*
>
> (iii) *be afforded a reasonable opportunity to respond to the evidence and to give his version of the matter;*
>
> (iv) *be afforded the opportunity of cross-examining witnesses or questioning any witness where evidence is being given orally in order to achieve points (i), (ii), and (iii). However, there may be exceptional circumstances which would render such a hearing practically impossible or very difficult to conduct, such as deliberately obstructive conduct on the part of the party concerned;*
>
> (d) *the hearing is to be conducted in an inquisitorial, not adversarial, fashion but there is no duty on the tribunal to explore every conceivable defence or to suggest possible defences;*
>
> (e) *nevertheless, the tribunal must conduct a full and fair inquiry which may oblige it to ask questions of the person concerned or of the witnesses, the answers to which may prove exculpatory insofar as the person is concerned. This is the way in which the tribunal examines both sides of the question;*
>
> (f) *there is no general right to counsel. Whether council may represent the person is in the discretion of the tribunal, although matters may be so complicated legally that to act fairly may require the presence of counsel;*
>
> (g) *the person must be mentally and physically capable of understanding the proceedings and the nature of the accusations and generally of presenting his case and replying to the evidence against him. The tribunal must satisfy itself on this point before embarking on the hearing.*[72]

It is essential for the proper working of a disciplinary process that the individuals, who are both the subject of it and who may be complainants, have free and easy access. It is clear that this is an area in which Aboriginal inmates require assistance from third parties.

The Task Force Recommends:

6.59 That the provincial Correctional Services Division review the internal disciplinary procedure governing institutions, and provide for an independent chairperson to determine disciplinary conduct. We suggest that the independent chairperson be a person who is familiar with the concept of due process.

6.60 That the internal disciplinary procedure in federal and provincial correctional institutions be explained clearly to inmates in terms of offences and procedure.

6.61 That disciplinary hearings be conducted in accordance with the principles of due process.

6.62 That Aboriginal inmates be allowed the assistance of advisors whenever they are a complainant or accused person in disciplinary procedures.

Term of Reference:

Corrections 6(d)

To determine the extent to which Indian and Metis Elders and other respected Indian and Metis leaders, organizations, and associations are presently involved in program development and delivery and in providing advice to senior correctional officials, and to determine how Indian and Metis people can become more involved in the correctional system in a productive and positive manner.

Employment of Aboriginals

In the course of our interactions with Indian and Metis communities, organizations, and persons, we were frequently faced with a call for an increase in the number of Aboriginal employees in all components of the criminal justice system. The following arguments were given:

A. a greater number of Aboriginal employees would enhance the system's understanding and responsiveness to Aboriginal offenders;
B. it is a relatively attainable goal in the short term and some people believe it would lead to the creation of Aboriginal agencies in the longer term;
C. as an employment equity initiative it has merit.

The Task Force views it as desirable and necessary that more Indian and Metis people be employed in the field of corrections.

We observed a noticeable lack of Aboriginal people employed in any capacity in correctional institutions. It is our view that Aboriginal employees bring to their place of employment varying degrees of knowledge about Aboriginal culture, lifestyles, attitudes and values which are shared in a variety of ways, formally and informally. Aboriginal people as a group suffer from high rates of unemployment and in some cases, underemployment. The criminal justice system has a responsibility to offer employment opportunities to Aboriginals. A number of Aboriginal employees expressed the view that they only wanted to have a job, seeing no extra or inherent obligation to promote their Aboriginal culture. These people were not interested in becoming involved in policy-making or program development. Rather, they wanted to perform well under the same conditions as their peers. Other Aboriginal employees observed that there is no encouragement for Aboriginal employees who want to express their Aboriginal culture in the workplace as an expression of their individuality and to provide a role model for other Aboriginal people. In some cases, Aboriginals have experienced actual discouragement. There were also Aboriginal employees who had the qualifications for and interest in developing programs and becoming involved as advocates or influencing policy relating to Aboriginal peoples.

Employers in the correctional system tended to have a divided view of the purpose for engaging Aboriginal employees. Some seemed to see it as simply meeting an affirmative action target imposed on them. Others viewed all Aboriginal employees to be role models. Others again felt that as long as the work was done it did not matter whether the employee was Aboriginal or not. Yet, some administrators found that Aboriginal employees related to Aboriginal inmates more easily and were an asset to have on staff. We cannot ignore that we heard of some instances in which Aboriginal employees had difficulty in adjusting to the environment. On some occasions, non-Aboriginal employees viewed initiatives to hire Aboriginals with scepticism. It is apparent to us that, while there is a growing sensitivity to Aboriginals as a group, employers, supervisors and administrators in general are not ready for working with Aboriginal employees. They do not understand the various roles that can be played by Aboriginal employees. They tend to "pigeonhole" Aboriginals into inappropriate roles. It is apparent to us that discrimination exists in many areas of the correctional system, and that in other cases, a perception of discrimination exists because certain hiring initiatives call for different treatment of Aboriginal employees.

While there is general acknowledgement of a need for more Aboriginal employees, hiring techniques have yet to be developed that target and tap Aboriginal communities effectively as a potential source of Aboriginal employees.

We note that various initiatives must be taken to recruit Aboriginal employees but still more are needed to ensure that Aboriginal employees remain in and are promoted in the work force. We have been advised that group hiring has been tried in the Alberta Solicitor General's Department. Group hiring, as we understand it, means the hiring of a group of Aboriginals at one time in one location and providing training to those individuals as a group. Other initiatives that can be and have been tried in various locations are providing support groups for Aboriginal employees at work, providing resource people to Aboriginal employees, and providing training and trial periods when Aboriginals are promoted. The federal Solicitor General's Task Force on Aboriginal Peoples in Federal Corrections (1989) has identified the same problems and proposes similar solutions to increase the number of Aboriginal employees. We endorse all of these initiatives and encourage the various employers in the criminal justice system to try all, some, or various combinations of these initiatives to ensure that once Aboriginal individuals are in the work force, they continue to be active and valuable contributors.

The Task Force Recommends:

6.63 That more Aboriginal employees be hired in all aspects of corrections including management and administration.

6.64 That the provincial government initiate the development of innovative and effective recruitment programs and policies to target Aboriginal individuals specifically, and that agencies enlist the assistance of Indian and Metis organizations in the development and implementation of such programs.

6.65 That programs be developed to provide upgrading and orientation programs to potential Aboriginal employees.

6.66 That managers educate themselves about the many roles an Aboriginal employee can play, and enter into

discussions with Aboriginal staff members.

6.67 **That management establish liaison with the Union and with employees to educate them about Aboriginal employment programs, so that objectives are understood.**

6.68 **That correctional administrators ensure that the work environment is receptive to Aboriginal employees from a non-Aboriginal perspective as well as from the Aboriginal employee's perspective, and encourage appropriate support groups or support mechanisms, including making Elders available to staff.**

Elders/Leaders/Organizations

There is a generally held perception that Indian and Metis leaders, organizations, and associations have abandoned Aboriginals in the criminal justice system. There seems to be very little contact with chiefs, band councils, Metis locals or Metis Settlement councils. Some Indian chiefs have told us that, because of increased band membership and the lack of adequate housing on the reserves, many band members do not live on reserves and are not known by their chief or band councils. Many individuals who have left the reserve to reside in urban areas have no continuing contact with the reserve. Public concern about the high number of Aboriginal persons incarcerated has at least identified the problem. It is the responsibility of government and of Aboriginal leaders, organizations, and associations to propose initiatives that will improve program development and delivery and make corrections more effective in protecting society.

Currently, there are a number of Elders in the province who are involved in program development and delivery in correctional institutions. Usually, Elders are hired on a "fee for service basis," or other contractual arrangements exist. At the federal level, each institution maintains a service contract for liaison, counselling, and Elder services with an agency or organization selected through a bidding process. Provincial institutions have moved to coordination of Indian and Metis programs on site by an Aboriginal employee. Both approaches have advantages and disadvantages. The Task Force sees no reason to state a preference. A recently formed Council of Elders for the Prairies Region of Correctional Services of Canada is expected to provide program and policy advice to regional administrators. At its first meeting in November, 1990, this Council recommended that a support mechanism be developed for Elders who work in correctional facilities.

Until very recently, there has been little evidence of significant involvement of Indian and Metis leaders and organizations in corrections. There are now indications that involvement by associations, councils and leaders is desirable. The correctional system and communities have expressed a willingness to become involved in expanding the service to and opportunities for inmates. The Task Force strongly supports this movement and urges Indian and Metis leaders and correctional officers to open or continue discussion aimed at increasing such activities. Provincial corrections already have a number of joint projects.

While the number of current projects is somewhat limited, proposed correctional legislation would allow for many more. The importance of involvement by Elders was described by the Native Brotherhood of Edmonton Institution:

> *We believe the solutions center around our Elders, and therefore, their continued support throughout the justice process must be expanded, especially in regard to the recognition of their proper status and capabilities.*[73]

A number of Aboriginal organizations exist which are concerned about and committed to alleviating the problem. These organizations include Native Counselling Services of Alberta, Poundmaker's Lodge, Nechi Institute, and the Kainai Corrections Centre initiative on the Blood Reserve. However, these organizations often suffer from inconsistent short-term program funding arrangements which cause instability of programming and affect the ability of these organizations to be involved.

The bureaucractic organization of government departments tends to discourage and confuse rather than encourage and assist Aboriginal community involvement. Nevertheless, there seems to be an increased interest among Aboriginal communities in becoming involved in the correctional process. For example, communities such as Fort Chipewyan are interested in having closed custody facilities operating in the community to keep juvenile offenders close to home. Many communities have expressed interest in having minimum security facilities for adult offenders in their communities. Every community contacted by the Task Force wanted to become involved in pro-active, preventive programs designed to reduce the number of young offenders. A wide range of social services were identified as being needed urgently in Aboriginal communities. They include alcohol and drug abuse treatment centres, detoxification centres, safe-houses, sexual abuse centres, and courses on family violence and parenting. All of these social services were seen as useful, urgently required preventive measures, as were education and Aboriginal awareness programs. While many of these programs are beyond the scope of this Task Force, we applaud the communities' efforts and encourage the government to participate. This will, however, require that the various departments responsible for providing or funding the services overcome concerns about intergovernmental and interdepartmental jurisdiction. They must cooperate to ensure that programs are delivered effectively, efficiently, in a cost-effective manner, and in an appropriate location.

We cannot ignore that the large number of Aboriginal people in conflict with the law has resulted in a large number of Aboriginal Albertans having criminal records. The "Report on the Survey of the First Nations of Alberta"[74] shows that 78% of men and 35% of women have an arrest record. Often it is a stated criterion for employment that an applicant may not have a criminal record. When the criterion is not stated, it is often understood to operate anyhow. The existence of a criminal record also prohibits people from having access to roles such as volunteers, visitors, or recognized resource persons. The existence of a criminal record has been identified by inmates as one of the major barriers to gainful employment upon release from a correctional institution. We are aware that under the Criminal Records Act, a pardon may be obtained two years after a summary conviction or five years after an indictable offence conviction. However, we have also been told that it sometimes takes years to have a pardon processed and approved. If pardon legislation is to be effective at all, there must be a meaningful review of the application within a reasonable period of time. Application for pardon is often made in relation to an employment opportunity, which disappears when the pardon process takes too long. We urge the criminal justice system to view individuals who have been "through the system" and who have a criminal record as valuable resource persons in appropriate circumstances. The existence of a criminal record alone should not immediately disqualify a person from employment, volunteering, visiting, or acting as a resource person.

The Task Force Recommends:

6.69 **That regular meetings be held between representatives of the Indian Association of Alberta and Metis Association of Alberta, Chiefs, Band Councils, Metis Settlement Councils and Metis locals, and representatives of the Solicitor General's department and the Correctional Service of Canada. Meetings should be held in various geographic areas of Alberta, to discuss correctional facilities, to exchange information, and to establish and maintain liaison between community and institution.**

6.70 **That federal and provincial Corrections make a concerted and sustained effort to encourage Aboriginal community involvement in correctional institutions. This may require a re-evaluation of screening criteria for security clearance.**

6.71 **That federal and provincial Corrections Services encourage community involvement in the delivery of correctional programs and services including closed and open custody facilities for young offenders, minimum security facilities for adults, and treatment and diversion programs. Different groups may be interested in or capable of assuming responsibilities for different programs or services. Community efforts in this aspect of corrections must be reviewed in a supportive manner. Diversion and after-release programs, particularly directed at young offenders, should be encouraged.**

6.72 **That the federal government review the pardon procedure for Aboriginal persons for the purpose of speeding up the process.**

6.73 **That federal and provincial corrections develop clear policy on the impact of a criminal record on the limiting of visitor access to inmates and inmate access to prison programs. This policy must be culturally sensitive and not limit access because of minor offences or system-related offences such as "failure to appear."**

Cross Cultural Training

A recommendation, made by many groups, was expressed by the Oblates of Mary Immaculate Justice and Peace Committee (Grandin Province) as follows:

> *That the task force urge the government to work with all segments of the criminal justice system to develop knowledge and respect for Native traditions and spirituality.*[75]

Task Force members had the opportunity to attend Sweet Grass and Pipe Ceremonies. We received invitations to pow-wows and shared traditional foods with various Aboriginal groups. We listened individually and as a group to Aboriginal Elders.

Aboriginal awareness and cross-cultural training can be included in virtually all components of the criminal justice system. Some training is offered in institutions, in the federal and provincial Solicitor General Departments, and on the staff's own time. However, we have been told that, in general, courses provide only a very basic and sometimes inadequate understanding of Aboriginal history, culture, heritage, and the current political situation. Sometimes, the trainers are non-Aboriginals who, although academically qualified, are perceived to be the wrong people to teach such a course. Courses are provided in central locations in hotels and offices. They are provided generally at the beginning of employment or early in a person's employment, and lack in practical relevance to the work environment. We have also been told that Indian culture is often the focus of training, and that Metis culture is ignored. The Metis Association of Alberta made these observations:

> *Have to educate correctional services regarding Metis People*
>
> *There is NO recognition of Metis in the correctional system. We must demand recognition of Metis people.*[76]

It is also clear that courses which include participant interaction with the Aboriginal community, in the Aboriginal community, have a lasting and more effective impact.

The Task Force Recommends:

6.74 That correction staff members who work or have contact with or make decisions about Metis and Indian inmates receive Aboriginal awareness training when they begin employment, and on a regular basis thereafter. All staff members, from frontline staff to the most senior administrators, should be included.

6.75 That content of a training program be designed for providing an understanding of Indian and Metis culture, history, heritage, religion and current situations.

6.76 That the program be provided where possible by Aboriginal instructors in an Aboriginal context, and that, where appropriate, Indian and Metis inmates and staff members who are knowledgeable and willing to participate be involved in delivery.

6.77 That the cross-cultural training program address issues and concerns specific to the work of correctional staff members. For example, if the institution houses Cree people primarily, the program should emphasize Cree customs, language, culture, and values. If the institution houses primarily Metis

people, the emphasis should be on Metis culture and spirituality. Issues of relevance to the work place should be discussed, for example, the handling of sacred bundles, or appropriate behaviour when escorting an Aboriginal inmate to a funeral.

6.78 **That the Aboriginal Awareness Training Program involve an Elder and members of the Aboriginal community at large to interact with participating staff members.**

Term of Reference:

Corrections 6(e)

To examine the level of interest in Indian and Metis Communities and among Indian and Metis Leaders and organizations in taking on a more active role in the delivery of community based correctional programs and crime prevention initiatives.

Fine Options/Community Service Orders

The Fine Options program has been described as one of the most successful programs for keeping Aboriginal offenders out of jail. Representatives from the Aboriginal community have told us otherwise, stating that the program has had very little success in deterring, rehabilitating or even punishing the offender.

The Fine Option program seems to generate much community interest. However, information from people who have been the subject of fine option orders and from those who administer the fine options program has shown a number of difficulties. The Alberta Association of Social Workers provided insight into a possible attitude towards or perception of fine option programs which may exist in small rural communities. The Association observed that, although the fine was imposed on an Aboriginal offender, often the community or the offender's extended family raised the money to pay the fine. When a fine option program was elected, it was mandatory for the individual to do the work and it was no longer possible for the community or family to participate in the retribution. The fine option seems to undermine a sense of community responsibility for the illegal conduct of one of its members, and for community retribution. While this observation may be valid in small rural communities, we have observed that it is not likely to be as prevalent in urban communities as these are less defined as an equivalent collection of people or community.

We were told consistently that the Fine Option program must involve work which is meaningful to the community and should not be seen as simply taking jobs from the community, as being trivial or easy work, or as work done solely because of the Aboriginal offender's option. These concerns are related not only to the quality of the work but also to the quality of the supervision. Aboriginal offenders, however, have expressed a general reluctance to engage in fine option programs. This may be because the provision of services to the community identifies the person as an offender and some shame is attached. In Aboriginal communities, public shame is deemed to have an effective and powerful deterrent effect.

The Lesser Slave Lake Indian Regional Council stated that:

> *On the one hand there is considerable concern that reserve communities are not the beneficiaries of community hour or fine option dispositions. On the other hand, in cases where alternative dispositions in respect to Indian offenders are employed, Indian communities are often dissatisfied with the results.*
>
> *The Regional Council heard several comments to the effect that community hours were not being served, due to lack of supervision, or because supervisors felt pressured not to report a failure to serve those hours to the proper authority.*[77]

On the same subject, other Aboriginal groups observed that:

> *The Fine Option program is not an effective way to punish criminals for the crimes they have committed. Community Service means having something to do to a person who would otherwise have no job or other commitments to attend to. There is no sacrifice and thus, no punishment. Additionally, the supervision of Fine Option participants is a strain upon the resources of the community. The amount of work it takes to find things for the participant to do and then to supervise them simply makes more work for the staff of the Band and Settlement Councils. Additionally, as most community members rely on local labour projects as a source of income, Fine Option participants take away opportunities for law abiding citizens to supplement an already meagre income.*[78]

Aboriginal women are generally restricted in their access to the Fine Option program. Often they are not able to travel to attend the program or cannot get adequate child care in their community. As a result, they choose not to make use of the program. Aboriginal women tend to be more often unemployed and poor than Aboriginal men. The imposition of a fine is often completely unrealistic and the Fine Option program is practically inaccessible. This is particularly so when a woman has to travel from a remote area to a place where supervision for the program is offered.

The Task Force Recommends:

6.79 That the Fine Option program be reviewed to ensure that work is available in the Aboriginal community which has the approval of the community and is sensitive to the needs of the community.

6.80 That the work be done in the Aboriginal offender's community or if not possible, in another Aboriginal community. In urban centres, local native organizations should be consulted for appropriate assignments, beneficiaries, and supervision.

6.81 That the work be broadened to include some rehabilitative merit. Examples may be: working with an Elder or providing service to the band, band council or settlement council.

6.82 That the supervision of Fine Option programs be made more effective.

6.83 That Fine Option programs involve community members in the supervision of work. For example, local people could be designated as assistant probation officers.

6.84 That some provision be made for the participation of the community or the extended family in the discharge of work commitments if the community or family considers it appropriate to do so.

Community Supervision

Virtually every group which made submissions to the Task Force noted that people who are eligible for release from correctional facilities and for serving the remainder of their sentence in the community, and people who have been sentenced to probation in the community, experience considerable difficulty. This appears to be in large part due to "lack of supervision." Currently, probation orders granted by the court are certain in duration but uncertain in specifying the nature of the offender's obligation during probation. Similarly, correctional institutions, Temporary Absence Committees, and the National Parole Board issue general guidelines for the inmate to follow and rely heavily upon probation officers and parole offers in the field to provide guidance to the inmate. Frustration with this system has been expressed both by Aboriginal inmates and the public. It has been suggested that Judges take a firmer role in sentencing to treatment or providing conditions of probation that are more specific and detailed. There is no doubt that these concerns result, in part, from the heavy workloads carried by probation officers. There is also a lack of Aboriginal-oriented facilities to which probation officers can refer clients. For example, there are only a limited number of beds available at Poundmaker's Lodge and the waiting period is some six months. The Youth Treatment Facility in St. Paul has only recently opened and is the only Aboriginal-oriented youth treatment facility in the province. In addition, officers who are not resident in the community lose touch with the community and the persons supervised by them. Non-resident officers are considered to be ineffective by the community. These concerns are most acute in the northern part of the province.

The Task Force frequently met with local service providers. We were generally impressed with the number of agencies and organizations represented at these meetings. However, having received information on objectives, restraints, budget processes of service providers, and the frustrations of the rural and isolated communities, we came to the conclusion that a fundamental shift is required in the provision of services outside of urban centres. The narrow focus, specific objectives, restricted client groups, conflicting jurisdictional mandates and policies, and specialized delivery all lead to frequent inefficient and ineffective use of available resources. It is the Task Force's view that the various government levels and departments must, together, consider the Indian and Metis population as their collective client. Resources and styles of delivery should be pooled and coordinated to respond to the need for a holistic approach if Indian and Metis people on and off reserves and settlements are to be assisted effectively.

In its attempt to secure funding for the provision of community programs, Native Counselling Services of Alberta encountered similar difficulties:

> *Each funder has its own mandate and objectives under which they fund a program. This means that each funder only takes responsibility for limited areas.*[79]

The Task Force Recommends:

6.85 That local probation officers or assistant probation officers be employed.

6.86 That probation officers and assistant probation officers work closely with Elders and community groups who have shown interest in the criminal justice system.

6.87 That the court demand and receive adequate information to make a probation order that is general enough to allow latitude but specific enough to provide a firm structure within which the offender may operate.

6.88 That resources be pooled and coordinated to provide decentralized facilities and counselling particularly with respect to alcohol and drug abuse, parenting skills, job readiness programs, physical and sexual abuse survivor programs, anger management, and life-skills.

Judicial Interim Release

Justices of the Peace are the first judicial officers to whom an accused person applies for release pending trial. Often, Justices of the Peace have a conservative attitude towards release. This is due, in part, to the various appeal alternatives available. The study of Judicial Interim Release Hearings provided the Task Force with the following major findings:

> *Native accused arrested and processed for Judicial Interim Release hearings in Calgary face a greater detention rate than non-natives.*
>
> *The Crown objects to release of non-Natives more frequently than it does Natives (62% vs. 52.7%).*
>
> *For reasons undetermined, but very likely, native accused will often adjourn themselves in custody in order to obtain services of a native court worker. This adjournment leads to unnecessary periods of custody for natives.*
>
> *A greater percentage of non-natives have previous criminal records for failing to appear under provisions of criminal code than do natives present during the period of this study (36% vs. 23.6%).*[80]

The study advises cautious interpretation of statistics because of the small numbers of Aboriginals involved in the sample (55 of a total of 524 cases), but even so, it is clear that something is wrong. The Crown objects less to the release of Aboriginals and there are fewer instances of failure to appear by Aboriginals. Yet, 49% of Aboriginals are detained compared to only 31.7% of non-Aboriginals. Even a cautious interpretation would support the conclusion of systemic bias.

On an average day in the Edmonton remand centre, 44% of remanded prisoners are Aboriginal compared to an Edmonton police workload of which 18.6% involves Aboriginals. These numbers also seem to support the conclusion of bias. The situation is unacceptable and must be addressed.

The study showed that a number of adjournments are requested by the Aboriginals themselves. Often, this is done to obtain the advice or services of a courtworker or lawyer. Some members of the Task Force have observed that courtworker service is not available at Edmonton city cells on a 24-hour basis, and the Legal Aid lawyer list is printed in such small print as to be inconspicuous. A similar situation exists in Calgary.

Justices of the Peace have considerable training with respect to the Criminal Code's provisions for interim release, but they receive only a somewhat brief cross-cultural training course.

Unemployment rates range between 70 - 80% on most reserves and settlements. The extended family is not always seen by non-Aboriginals as being a stable environment; adult Aboriginal males have a high incidence of criminal convictions. Excessive alcohol and substance abuse is a serious problem for some members of a number of Aboriginal communities in the province.

Throughout the criminal justice system we note that having a job, having a fixed address, agreeing to refrain from associating with individuals with a criminal record, and abstaining from the use of alcohol or drugs are almost always conditions of release. It is our view that some of these conditions may simply be unrealistic. They may also be impossible for an Aboriginal person to meet. To require Aboriginals to do so only invites a breach of the conditions.

Similarly, posting a bond even for a modest $500 will, in the case of many unemployed Aboriginals, be the same as refusing release. This is a perfect example of how equal treatment can lead directly to an inequitable consequence. It is imperative that Justices of the Peace and Judges who review interim release decisions be more creative in imposing more appropriate conditions for Judicial Interim Release.

It is also imperative that Aboriginal communities take steps to assist persons charged who need help in assuring the court that they will attend on their court dates and will not be the source of more problems. The John Howard Society had implemented a successful bail program, but it has been discontinued. We recommend a review of the concept of this program and renewed delivery perhaps at the initiative of an Aboriginal service group. It has been suggested that Aboriginal councils and communities could become involved in enabling the person charged to be released and assuring court attendance. It is imperative that these options be reviewed and considered.

The Task Force Recommends:

6.89 That Justices of the Peace and Judges review with Aboriginal peoples the criteria currently used for release, and ensure that conditions imposed are culturally sensitive and realistic.

6.90 That Aboriginal communities become involved in assisting accused Aboriginals in satisfying the court that they will keep the peace, be of good behaviour, and return to the court for their appearance dates. This could be accomplished, for example, by providing minimum security custody homes or participating in bail option schemes such as the John Howard Society's program.

6.91 That conditions such as posting a bond, promising to refrain from associating with individuals with a criminal background, refraining absolutely from the use of alcohol, maintaining suitable employment, or maintaining a fixed address be recognized as being culturally insensitive and possibly unnecessary.

6.92 That a review be done of the concept of the bail program formerly operated by the John Howard Society, and that it be reinstituted at the initiative of an Aboriginal service provider.

6.93 That a program be developed with the assistance of the Aboriginal community to provide assistance and support to the police, the Justice of the Peace, and the Aboriginal accused person before a Judicial Interim Release hearing is held.

6.94 That Aboriginal-specific cross-cultural training be incorporated as an integral part of initial training for Justices of the Peace, and be repeated periodically during the course of their careers. Training should be developed and delivered by Aboriginal people.

Young Offenders

The Task Force has been struck by the plight of many young offenders who have been touched by the criminal justice system. In particular, we have grave concerns that young offenders are being charged with trivial offences and jailed for long periods of time before trial, solely because there is no other place for these young people. For example, we are advised that a young person was charged with failing to pay a C-train admission fare and was retained in a young offenders' centre for a number of months pending trial. There were no family members or friends who were willing to accept responsibility for the young person and no social service agencies to provide support. We have been told that social service agencies divorce themselves from responsibility when a young person comes into contact with the criminal justice system. In view of the general failure of foster home placements for Aboriginal youths and the lack of family support, the Task Force finds it profoundly unreasonable that social service agencies should allow corrections to assume responsibility for youths. We find this a deplorable situation, one which is in urgent need of change, and for which better alternatives must be developed.

While it is difficult to advocate the release of youths who have no place to go, it is more difficult to understand how remanding them in custody can be justified when the circumstances warrant no more than an open custody disposition. We are advised that a pilot project of the Alberta Solicitor General's Department in Edmonton city cells has resulted in the effective placement of young offenders who might otherwise have been remanded in custody. We encourage such projects and would suggest that similar emphasis be placed on northern remote communities where young offenders in custody face inadequate facilities, which are sometimes shared with adults, or removal to a distant facility and thus the loss of family and community contact. Some communities like Fort Chipewyan which have presented briefs to the Task Force hold very strong views about keeping their young people close to their homes, even to the point of wanting local open custody facilities. Most communities expressed a desire for activities in the community which would keep the youths from contact with the criminal justice system, specifically recreation, treatment interventions, education, and employment.

We note that in Edmonton and Calgary, young offenders are required to wait up to six months for their trial. Whether they are detained in custody or not, it is our view that a delayed trial becomes meaningless to the young offender. It is imperative that the courts examine meaningful and perhaps novel ways of reducing the period of time it takes to finally determine a matter in youth court. Similar delays are experienced in some rural areas and create community problems in addition to those of the individual involved:

> *The length of time it takes for the courts to hear a case can be manipulated too easily. In many cases the accused returns to the community only to commit more crimes while waiting. The attitude held by the offenders is that some jail time will probably be spent on the first charges, and that sentences for subsequent chargers will run concurrently or will only add a month or two to the first sentence. Additionally, charges for subsequent acts are usually withdrawn or bargained in order to get a guilty plea and quicker conviction. In the end, what this means is that the courts do not prevent crime. Rather, they increase crime by providing offenders with more opportunities and less punishment.*[81]

The Young Offender Alternative Measures Program aims at diverting first offenders into programs that include community work, victim satisfaction, and dispute resolution. We have been told that everyone, from police to Crown Prosecutors to the Solicitor General's Department, has acknowledged the current Diversion Program to be less effective for and under-used by Aboriginals in comparison with non-Aboriginal offenders. Perhaps the difficulty lies in the current diversion process. The very fact that it is restricted to first time offenders limits its application. It is apparent that the threat of being sent to a young offenders' centre has a deterrent quality. However, once an individual has been detained in a young offenders' centre for any length of time exceeding one week, the deterrent effect diminishes quickly, primarily because the centre is sometimes recognized as a better environment than the one known before entering the facility. For these reasons, it seems appropriate to make every effort to prevent young people from actually serving time in a correctional facility, and to ensure that, once young people have been in a correctional facility and have committed another offence, alternative dispositions still be available. A number of Indian and Metis communities have expressed interest in becoming more involved in such programs for youth. Section 69 of the

Young Offenders Act allows communities to become involved in youth justice committees. Concrete initiatives in this area are commended. Significant involvement of Elders in mechanisms of dispute resolution would provide the crucial traditional element.

Despite the fact that the young offender centre may present a better physical environment, the centres have also been subject to criticisms relating to insufficient Aboriginal-specific programming including spiritual programs, alcohol and drug abuse treatment programs, and training programs related to specific work skills. The Task Force has seen well-developed opportunities for academic education offered in young offender centres.

The criminal justice system as it relates to young Aboriginal offenders is in many respects unique and different from the system as it applies to adult offenders. One young offender told the Task Force that he knew more about what happens and what can be done than his lawyer. There is an obligation on the part of lawyers who practice in this area to provide appropriate advice to the court and to the young offender, and to work with family, social workers, and community groups to secure appropriate placement for young offenders. This obligation ought not to be forsaken in favour of a legalistic approach to youth court. Some recognition in the Legal Aid Tariff ought to be made for the informal, out-of-court role played by a lawyer in these circumstances.

Follow-up for young Aboriginal offenders in the community is subject to the same criticisms as follow-up for adult offenders in the community. However, there seems to be considerable support in the communities we visited for youth-oriented programs. We encourage communities to become involved in programming for young people generally and in providing assistance to young offenders specifically. Victim reconciliation programs, dispute resolution involving mediation and arbitration with the family of young offenders and their community, and restitution schemes are all crucial and necessary.

The Task Force Recommends:

6.95 That the length of time it takes to finally resolve a matter in youth court be corrected by the Province of Alberta. At present, the delays are intolerable and deplorable.

6.96 That young offenders be detained in detention centres only as a last resort.

6.97 That efforts be expanded to develop or locate appropriate facilities to house young offenders who have no place to go, and that these facilities not be correctional facilities.

6.98 That alternative measures programs be expanded to be more available to Aboriginal offenders.

6.99 That the Department of the Attorney General review alternative measures programs to expand them to include re-offenders and a broader range of offences.

6.100 That Aboriginal awareness programs and culturally appropriate programs be more widely available in young offenders' centres.

6.101 That formal alcohol and substance abuse treatment programs for Aboriginal youth such as the St. Paul facility be extended and expanded throughout the province.

6.102 That the number of Aboriginal staff members within the Young Offender centres be increased.

6.103 That alternative measures programs be instituted and administered by the community at the encouragement of the Department of the Attorney General.

Conclusions

> *The inability of this society to recognize Aboriginal languages, Aboriginal culture, and Aboriginal peoples as a part of itself, is one of the greatest problems facing Aboriginal and non-Aboriginal people today.*[82]

This observation was made by Mr. Ray Fox, President and Chief Executive Officer of the National Aboriginal Communications Society in his Brief to this Task Force. He concluded his submission by saying

> *you have to understand that these problems are a direct result of this society's failure to recognize and respect the fact that Aboriginal people and cultures are and will remain different and distinct from any other culture, not only in Alberta, not only in this country, but in this world.*[83]

It is the general view of the Task Force that corrections should initiate programs and policies which in the long term will result in correctional services being delivered by Aboriginal communities for Aboriginal peoples in the Province of Alberta. We are also of the opinion that programs and policy must be developed with the assistance and participation of Aboriginal communities. These programs and policies must allow for an amount of flexibility and take into consideration local and regional social and economic factors. Above all, they must respect and not interfere with the cultural and spiritual practices of the individual inmate, be they Aboriginal or non-Aboriginal in nature. That is, Aboriginal spirituality and culture must not be forced on an unwilling participant even though the inmate may be of Aboriginal origin, nor should it be denied the inmate.

Within the area of programming the Task Force holds that alcohol and substance abuse treatment must be given priority. A concerted and diligent effort to assess and develop effective programming is crucial. Program delivery, with the assistance of the Aboriginal community and its committed and unhindered support, must be provided if real gains in this area are to be made.

It is the view of this Task Force that, implicit in the right to determine policy and implement programs, is the responsibility to do so in a manner that will serve the interest of justice of all citizens of the Province of Alberta.

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7.0 Native Counselling Services of Alberta

Preamble

Native Counselling Services of Alberta (N.C.S.A.) provide a broad range of programs throughout the criminal justice and social service systems. The Task Force has concerned itself with those programs provided by Native Counselling Services that relate to the criminal justice system. The agency offers perhaps the most successful assistance to Aboriginal subjects of the criminal justice system, and to the administrators of that system.

Findings and Recommendations

Term of Reference:

Native Counselling Services of Alberta

7(a)

To examine the effectiveness of the working relationships between Native Counselling Services of Alberta and the police community, the courts, the correctional systems, both federal and provincial, the Indian and Metis communities and individuals and the Indian and Metis Leadership Organizations and Associations.

The courts generally hold the N.C.S.A. in high regard. However, according to the Brief submitted by the Metis Nation of Alberta, the Aboriginal people in Alberta do not share that view:

> *An overwhelming number of workshop participants were unhappy with Native Counselling Services of Alberta."*[1]

The agency is often viewed as having been conscripted by "the system". The Alberta Federation of Metis Settlement Associations stated:

> *It is important that the courtworker does not project an image of kinship with the police, judges or prosecutors. The main reason for this is almost all native offenders have a distrust for the above-mentioned officials arising from their circumstances. If the native courtworkers associate too closely with representatives of the justice system, then this distrust might be transferred over to them.*[2]

There is a perception that the agency is not accountable to the Aboriginal community but rather to its funding source, the government.

> *Both politcal Metis and Indian organizations have a seat on the Board of Native Counselling Services of Alberta. The other five Board members are selected by the Board and the Executive Director of Native Counselling Services, none are elected or serve a set term. A commonly heard comment by workshop participants was, "who is N.C.S.A. accountable to?" The answer is, the agency is accountable to the above individuals as well as to its funders. There is little or no accountability to its clientele.*[3]

A widely-held view exists among Aboriginal people that Native Counselling Services is an organization run by Metis which employs Metis people primarily and serves Metis to the exclusion of Indian people.

The agency's ground-breaking efforts make it the "Elder" service in Alberta. Many of its pioneering initiatives have made it easier for other service providers to provide the same, expanded, or parallel services in various communities. Native Counselling Services is to be commended for working with other agencies as well as with administrators of the criminal justice system to make that system more understandable, acceptable and fair to all concerned.

In some instances, the agency's very success has had a negative impact on some Aboriginal communities. Established organizations tend to look towards Native Counselling Services as the voice of Aboriginal people. This is not necessarily so. In fact, this tendency has sometimes meant that other legitimate Aboriginal groups and communities have not been able to obtain funding to organize their own local committees as a voice for their community concerns. Native Counselling Services has tended to overshadow other legitimate groups whose views should be heard. The Lesser Slave Lake Indian Regional Council commented:

> *There is no Chief and Council input on their Board of Directors, as a result of which they lack that essential element of accountability to the public they serve. They operate separate from the Bands and thus there is a lack of communication. Many perceive Native Counselling Services as a self-perpetuating bureaucracy that has outlived the needs of its public. The Regional Council resents the fact that Native Counselling Services is assumed to be the Authority and spokesperson for Indians in the Criminal Justice System context.*[4]

Native Counselling Services identified to us a very serious over-extension on their part. Apparently, the agency has stretched its funding to the limit in providing programming required in the community and not provided by any other source. This situation may account, in part, for the decrease in confidence expressed by the Aboriginal community in general.

In its Brief to the Task Force, Native Counselling Services addressed criticisms levelled against the agency at the time of the Kirby Commission. One persistent concern seems to be that Native Counselling Services often provides counsellors who are not from the community where the service is required and who do not speak the language of the Aboriginal people in that area. While it is acknowledged that Native Counselling Services staff should not be used as interpreters, it is also clear that staff members would be more effective in serving their clientele if they were able to speak the relevant Aboriginal language.

The Sunchild Band, for example, made the following observation:

> *There is an N.C.S.A. office and worker located in Rocky Mountain House. This worker, however, is not native and comes from unrelated background. When there is a need an interpreter has to be used and when interpreters are used there is always something lost in the translation process. Mention has been made about the judicial system falling within the context of the whiteman's society and laws and now we have a Native Counselling Agency with a non-native staff member serving the community. Perhaps N.C.S.A. has to look at their hiring and staffing procedures and revamp it to serve the native community to its fullest extent.*[5]

In its Brief, Native Counselling Services stressed the importance of its role of educator and trainer. The Task Force commends these initiatives. It is our view that community involvement must be encouraged and assisted when a community wishes to take over programs currently provided by Native Counselling Services. This could mean that Native Counselling Services could become an umbrella organization for community-based services in different parts of the province.

The Task Force commends the recent initiatives on the Blood Reserve where functions which were previously performed by Native Counselling Services have been taken over by the community, with the assistance and cooperation of Native Counselling Services. Over time, Native Counselling Services of Alberta has developed a wide network of employees which covers most of Alberta. The organization has developed significant expertise in the provision of court worker programs, program development and delivery, and the identification and mobilization of funding sources for the benefit of Aboriginal people. This expertise is the result of many years of diligent work on the part of the agency's administration.

Term of Reference:

Native Counselling Services of Alberta

7(b)

to identify to the extent possible methods of improving services through the N.C.S.A. or through other organizations or service delivery options.

Despite the success of N.C.S.A. programs, there is a growing sentiment that perhaps the time has come for a significant shift in direction. Native Counselling Services not only recognized the need for a shift, but also commented on it in their Brief. The nature of this shift would see N.C.S.A. become a training resource for communities rather than staying in its current role of deliverer of services to individuals.

> *N.C.S.A. believes that the Criminal Justice System must look to the communities to provide their own answers to these problems. Resources must then be found to help the communities implement these solutions. N.C.S.A. does not believe that these resources must always be in terms of funding, instead the community should look towards their greatest resource, their people. Through the planning and development of community based programs, and by training local residents to deliver these services, the impact on the community will be twofold. First it will allow the community to take control of the service and make provisions in the program to address the needs of the people. It will also send a clear message to the community residents that are involved in criminal activities, that the community will no longer tolerate this behavior.*[6]

The source of the sentiment seems to be the desire of Aboriginal communities to assume responsibility for their own affairs. Native Counselling Services would assume a community development role in preparation for community-based service delivery. It is clear that a transition period would be required for both the agency and the communities. This represents a significant difficulty because Native Counselling Services would have to continue to provide services while shifting to the community development approach. Present funding arrangements are provided on a contractual basis for delivery of specific services. If the government concurs with and supports the community development role for the agency, alternative funding arrangements will have to be developed.

To date, Native Counselling Services has been involved primarily with the Courts and correctional institutions. Many inmates express confusion and isolation at other stages of the system which are equally important. For example, a representative of Native Counselling Services or of a similar organization could explain to an accused person held in city cells the process and relevant rights prior to or after attending a hearing before a Justice of the Peace. However, we note that there are a number of Aboriginal inmates who are kept for long periods of time in remand facilities. These inmates have no access to programming but they should, in our view, have access to the administration through persons who may understand their culture.

The Task Force Recommends:

7.1 That Native Counselling Services of Alberta attempt to employ local people in community service positions who speak the local Aboriginal language.

7.2 That Native Counselling Services of Alberta focus on training and assisting community-based organizations which provide services in the criminal justice system.

7.3 That representatives of Native Counselling Services of Alberta or Aboriginal liaison officers be provided at city cells, lock-up facilities, and remand facilities.

7.4 That the government and the criminal justice system view Native Counselling Services of Alberta as only one of many potential sources of information, assistance, and service to Aboriginal people.

References

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[2] Alberta Federal of Metis Settlement Associations, "Submission to the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta," July 18, 1990. p25.

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[4] Lesser Slave Lake Regional Council, "Submission to the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta," September 10, 1990. p32.

[5] The Sunchild Band, "Submission to the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta," 1990. p5.

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8.0 Additional Considerations

Preamble

While the majority of considerations regarding the criminal justice system and its impact on the Indian and Metis people of Alberta can be captured under the main headings represented by Chapters 1-7, it is inevitable that there are some additional considerations that defy categorization. These topics include: socio-economic factors; jurisdictional interaction between the federal and provincial governments; government departments; cross cultural training; Aboriginals employed in the criminal justice system; women's issues; and youth issues.

Each of these topics has been considered individually by the Task Force, but for the sake of convenience have been collected under the general title "Chapter 8: Additional Considerations."

8.1 Socio-Economic Factors

Term of Reference:

Additional Considerations 8(a)

to identify and describe other areas of concern that contribute to Indian and Metis people becoming involved in the criminal justice system in the first instance, and to recommend other steps that can be taken to more effectively address those areas of concern.

The over-criminalization of aboriginal people in Canada defies conventional criminological assumptions. For instance, although there is a well known correlation between poverty and crime, as well as urbanization and crime, these arguments do not adequately explain why aboriginal people are over-represented in Canadian prisons. Furthermore, aboriginal crime is simply not an extension of their alcohol problem, as some authors seem to suggest. It is the Blood Tribes position that the key to ascertaining the antecedent causes of aboriginal incarceration lies in their history of oppression, *colonization, exploitation of their lands and resources, and the detrimental policy basis of the past Indian Acts. Coupled with the fact that the criminal justice system is primarily a white middle classed male institution with no concept or understanding of Indianness.*[1]

Without a socio-economic study of Aboriginal people, it would have been impossible for the Task Force to examine the impact of the justice system on Aboriginal communities. We must look at the issues underlying the socio-economic conditions because they are major and direct contributors to first time Aboriginal involvement in the criminal justice system.

The conditions identified in the report from the Osnaburgh - Windigo Tribal Council Justice Review Committee have been examined by the Task Force. Most of these conditions apply to Aboriginal people in rural Alberta.

It is the opinion of the Task Force that the cultural differences between Aboriginals and the dominant society are deep-rooted. The perception of these cultural differences by the dominant society, together with other factors which will be mentioned later, contribute to low self-esteem among Aboriginals. Clearly, Aboriginals are victims of racism and discrimination.

Every Indian or Metis community visited by the Task Force had its own character. There are eight different groups in Alberta. Some reserves have a strong spiritual and cultural base. In others, this was lacking. We observed a renewed interest among Aboriginals in learning more of their history, culture, traditions and language. The Task Force recognizes the depth of spirituality of the Aboriginal people and the pride they have in their culture and tradition. These are among their greatest strengths and greatest hopes for the future.

Examining areas of concern which contribute to Aboriginal first time involvement in the criminal justice system led us to identify factors which are symptoms of Aboriginal powerlessness. They are not the cause. Government inaction in settling issues of sovereignty, treaty rights and land claims was one of the major causes of the Aboriginal unrest in the summer of 1990. Indians have demonstrated forcefully that the problems of sovereignty, Treaty, land and aboriginal rights must be given priority by government.

Not all factors identified in our examination contribute to Aboriginal people becoming involved in the Criminal Justice System in the first instance. However, poverty, loss of culture and tradition, unemployment, inadequate health services, inadequate education and training, family break-down and racism must be recognized as factors which do contribute to criminal activity by Aboriginals.

Most Aboriginals are located at the low or bottom end of the economic scale. They have long memories and are unforgiving with respect to past injustices, most of which are real rather than perceived. Indians are wards of a paternalistic government which has changed its policies to meet different situations. The plight of the Indians is proof that the policies adopted have either been ineffective or have utterly failed.

Indians on reserves generally live in sub-standard housing and lack many conveniences considered essential by the poorest Canadians. Indians tend to have large families, that include extended families. As a consequence, many Indian homes are severely over-crowded.

In Alberta, approximately 5,000 Metis live in eight Settlements. In the one Settlement we visited, the conditions were similar to those we found on Indian reserves.

Moreover, many Aboriginals are unable to follow their traditional life-style of fishing, hunting and gathering. The resource base which sustained the Indians for over 20,000 years has been or is in the process of being lost to encroaching resource industries such as oil exploration and production, lumbering and paper mills.

The unemployment rate on some of the reserves we visited was 90%. The only employment available was Band administration and work on the reserve directed by the Band. Welfare has replaced meaningful work. Traditionally, men were providers while women looked after the children and the home. The advent of welfare has changed these traditional roles. The acceptance of welfare meant that men lost their role as providers. Carol LaPrairie makes the following observation:

> *One such explanation lies with the loss of traditional values and roles. The breakdown of traditional values resulting from social and economic erosion of the Indian way of life has created for many Indian people, a loss of power and status not only in relation to the dominant society but within Indian society as well. This loss produces both social disorganization and interpersonal tension.*[2]

Commenting on the demise of male roles in Indian society, LaPrairie states:

> *Within the traditional economy the household was the basic unit of production and consumption (i.e., the domestic mode of production), families co-resided at times around certain activities such as hunting and fishing, and extended family life was of great importance. Men and women maintained distinct roles and skills essential to the survival of the family unit and to the domestic mode of production. For men, strength, agility and skill in the bush were the essentials of life, and for women, the making of clothing and the preparation of food. The division of labour was primarily sexual.* [3]

LaPrairie refers to an unpublished paper by Marilyn Van Bibber. Van Bibber comments on the demise of traditional economies as follows:

> *In 1949 they (the Indians) were independent producers but now they must compete for jobs within the context of the broader economic system or otherwise look to the broader society for social assistance. Roughly speaking, men earn the former while women obtain the latter. A man's work outside the village may be for lengthy periods, but almost invariably ties to his household and village prompt him to terminate his employment. For this reason, men's work is not year-round and his contribution to the household economy is sporadic. A woman's contribution, composed mainly of social assistance, is smaller but much more stable as it can be counted on to continue year-round. One apparent result is that, to a large extent, women control the household economy. With the assurance of social assistance women are fairly independent and do not require the support of a man.*[4]

Because Indians on reserves do not own their land or their houses, they are unable to mortgage their homes to raise money for business ventures. For the same reason they are unable to obtain capital loans from the conventional lending institutions to purchase capital equipment. As a result, much of the farm land on reserves is leased to non-Indians.

Most of the reserves suffer from severe over-crowding. The crowding is aggravated by the high Indian birthrate and the passage of Bill C-31. When the reserves were established, the allotment of land was 128 acres to each family member. Assuming the land base was adequate to begin with, the Indian population has now increased to such an extent that reserves can no longer provide an economic land base.

In general, we observed that many communities have some recreational facilities. We also noted that often, there was a lack of leadership to initiate and conduct meaningful programs. Recreational programs can be combined with crime prevention initiatives. Three important examples of recreational programs were noted. On the Assumption Reserve, the 'Talking Drum' program provides Indian youth with a meeting place where they participated in various sports and cultural activities. Youth also participates in wilderness camps. We were impressed by the facilities and leadership of the boxing club on the Samson Reserve. The Band and Council of the Paul Reserve encourage an active hockey program.

Education

Most reserves and settlements have excellent, good or adequate schools funded by Indian and Northern Affairs (Canada) Alberta Education. Indians have a large measure of control over the operation of these schools.

Many of the reserves, settlements and communities in Northern Alberta are isolated. Their populations are small. It is neither economical nor possible to have a school which offers grades beyond grade six or nine on the reserve or settlement. Aboriginal children who want to continue their education must leave their homes and go to a larger centre. Being removed from their homes, their roots and their families causes separation trauma for many children. Many are unable to overcome this trauma. Their performance in school is not equal to their potential, or alternatively, they leave school and return to their homes or go to an urban area. During our visit to the Paddle Prairie Metis Settlement, we learned that if children want to attend school beyond grade nine they either have to put up with the two-hour-plus per day bus trip to High Level or leave their homes to reside in High Level, Peace River or Manning. We have been told that when Aboriginal children attend school in urban centres they face discrimination and racial taunts. These conditions aggravate the separation trauma from which they already suffer.

There are alternatives to busing and living away from home. Correspondence courses are available and are used in some communities. Remote communities may be able to arrange for a computer link-up to serve children in their home community.

Aboriginal children become involved with the criminal justice system at a very early age. Many of the Briefs we received stressed the need for education about the criminal justice system in the elementary grades. Such education should be intensified at the Junior High and Senior High School level.

Adults also seek education about the criminal justice system. G. B. Minore of Lakehead University adopts the following statement of Jolly in which he argues for a systematic and co-ordinated approach to community legal education for Aboriginal people in Canada:

> *While it is true that the public in general is often woefully ignorant of the law and the Justice System, in the context of Native people, this lack*

> *of awareness is frequently compounded and exacerbated by isolation, of regular Court sittings, lower levels of formal education, significant language and cultural differences from the predominantly non-Native Court personnel, and a historic distrust of Government and White society. The result is often a profound, deep-seated alienation from the Euro-Canadian Justice structures, a visceral feeling that Native needs and concerns do not matter, and a bitter sense of helplessness.*[5]

Minore points out that lack of comprehension applies not only to the law and judicial procedures, but also to Court decisions. Aboriginal people do not understand that both the police and the courts work within legal limits.

Aboriginal education should also include instruction on the customs, traditions and life-style of the non-Aboriginal community. All school curricula should be expanded to recognize the significant contributions made by Aboriginals to Canada. Non-Aboriginals should receive appropriate instruction to create a better understanding of Indian and Metis identity, culture, history and tradition.

Aboriginals coming to urban centres from reserves and settlements have little or no knowledge of urban survival. Examples given to the Task Force included lack of knowledge of how to use the urban bus system or light-rail transit, where to go for assistance, and the availability of Aboriginal and non-Aboriginal service agencies in the urban area.

Indian and Metis children should receive a bi-cultural education so that they can relate the Indian and Metis cultures to the dominant society.

The Task Force Recommends:

8.1 That the Department of Education and the Indian and Metis communities develop curricula to include instruction on Indian and Metis history, culture and traditions. Such instruction should begin in the lowest possible grade in all schools in Alberta.

8.2 That Aboriginal children be educated about the history, culture, and religions of the dominant society.

8.3 That Aboriginal children be instructed in urban life-skills.

8.4 That community legal education programs be developed for Aboriginal communities, and that Judges, Prosecutors and defence counsel be encouraged to instruct these programs.

Alcohol and Substance Abuse

A high percentage of Aboriginals who come into contact with the justice system abuse alcohol, drugs or other substances. Poundmaker's Lodge stated:

> *There is a need for substantive changes to the way in which the Criminal Justice System addresses Native people; there is a need for police, lawyers, prosecutors, and justices to see the 'illness in the human being' rather than 'the drunken Indian.' In most Native communities across Canada 80 percent of the people have a problem with alcohol. Sending our people to gaol or placing them on probation rather than sending them for treatment only enables Natives to continue to hurt themselves and their families.*[6]

The Brief from the Poundmaker's Lodge offered the following observations:

- Hobbema, one of the wealthiest Reserves in Alberta where poverty and poor housing are not the major problems facing the community, alcoholism and teenage suicides are the primary issues facing that Reserve. Eighty percent of the community is having problems with alcohol and drugs.
- alcoholism runs in families, even when the children are separated at birth from the alcoholic parents and raised by adopted parents.
- environmental factors in the family situation where the mother, father, aunts and uncles drink; children learn that this is an acceptable pattern of behaviour. When the child becomes a teenager, the drinking pattern continues.
- punishing an alcoholic by sending him or her to gaol without also providing treatment, will not aid recovery.
- most Aboriginal people coming into contact with the Police and the Criminal Justice System do so because of alcohol.
- when an alcoholic offender is sentenced to probation, community service work, parole, or even incarceration without first addressing the need for treatment, then the justice system is enabling the addiction to continue.
- the disease of alcoholism is a chronic disease. It is permanent. It cannot be cured, only put into remission.
- Aboriginal people have a greater propensity for using alcohol and/or drugs at the time of the offence. Compared to 93% of adult Aboriginal offenders, 83% of non-Native offenders reported the use of alcohol and/or drugs prior to the offence.
- Aboriginal young offenders have a greater propensity to have been using alcohol and/or drugs prior to the offence. Between January 1, 1989 and December 31, 1989, 86% of the Aboriginal young offenders compare with 76% of the non-Aboriginal young offenders reported their use of alcohol and/or drugs at the time of the offence. Drugs and alcohol, in combination, and not alcohol alone, is the choice for young offenders (57% of Aboriginal offenders, vs. 49% of non-Aboriginal offenders).
- sentencing an offender with an alcoholic problem to either community service work, probation or incarceration, will not help the individual to address his or her alcoholism.[7]

There is no statistical information about the use of inhalants such as glue and gasoline. However, Briefs received by the Task Force indicate that the problem is of epidemic proportions, particularly on the more isolated reserves and settlements.

The cycle of social and economic problems that lead first to alcoholism, then to involvement with the criminal justice system, then to subsequent release to the community only to engage in the same activities is often repeated. If left untreated, the disease of alcoholism is fatal.

Alcoholism must be treated as a disease and not as a crime. The criminal justice system has proven conclusively that incarceration, fines and community service do not cure the disease. In its Brief, Poundmaker's Lodge referred to a window of opportunity for treatment. This window of opportunity must be identified by police, Prosecutors and Judges. When it is apparent that accused persons suffer from alcoholism, they should be directed to treatment. We encourage the police to continue their practice of taking intoxicated people home or to a safe place. However, this practice does not go far enough. While the police have very few options for dealing with an intoxicated person, the court has many. Several Judges have adopted the practice of accepting a plea in cases involving alcohol, and delaying sentence to give the accused person an opportunity to seek and take treatment. This may mean many adjournments and delays, but the objective is to capture the "window of opportunity" to encourage treatment. If an accused person does not seek treatment, the court may impose the appropriate sentence. This procedure has been attempted by several Provincial Court Judges with some measure of success.

The Task Force Recommends:

8.5 That there be adequate treatment centres and sufficient beds in treatment centres to accommodate Aboriginals who require treatment or are recommended for treatment.

8.6 That Correctional Services Canada and the Correctional Services Division in Alberta enter into contract with Aboriginal treatment centres, and pay for more beds for inmates of the federal penitentiaries and provincial correction centres.

8.7 That the Government establish regional alcohol treatment centres for young offenders, similar to Poundmaker's Lodge and St. Paul.

8.8 That the Government recognize and be prepared to fund the treatment and counselling of families of alcoholics.

Family Break-Down

During our visits to young offender centres, provincial correctional institutions and penitentiaries, we met with Native Brotherhoods and Sisterhoods. On each occasion, we conducted an informal survey by show of hand, to determine the number of inmates who came from foster homes. The majority of inmates were raised in one, several, or multiple foster homes. Many came from single parent families or families which were dysfunctional because of alcohol, unemployment or poverty. It was clear that many families lacked the cohesiveness required to hold them together.

The Task Force is persuaded that the high incidence of children raised in foster homes is one of the factors which contributes to Aboriginals coming into contact with the criminal justice system for the first time. Not all foster homes are detrimental. Indeed there are a few success stories. However, the failures do out-number the successes. Some children who come into contact with the criminal justice system and are raised in non-Aboriginal foster homes lose their identity as Indian or Metis. They lose their identity as a member of a family or of an extended family unit. Frequently, they are separated from their own community. Any knowledge of spirituality or culture they may have had is usually lost when they go to a non-Aboriginal foster home. With no sense of family, community or culture, they frequently end up "on the street" at a very early age.

The Task Force has been told repeatedly of the effect of residential schools on several generations of Aboriginals:

The belief that all the Indians' problems would vanish if only they could be made to adopt white values and beliefs was at the root of assimilation and justified the creation of the residential schools. Residential schools were seen as a way of accelerating the assimilation process by taking Indian youth away from their homes and communities in order to re-socialize them more quickly. Thus, contact with parents was minimized and youth were enroled in the schools, 'the teachers acknowledged neither Indian language nor culture... Whatever the issue, the placement of a school, the amount of school holidays, the needs of the children, the opinions of Indian parents were discounted.' [8]

The failure of the residential schools to assimilate Indians into the dominant culture did not mean that children remained untouched by the resocialization process. In fact, Cardinal claims that residential schools were actually destructive because they: alienated the child from his own family, they alienated him from his own way of life without in any way preparing him for a different society; they alienated the child from his own religion and turned his head resolutely against the conforming substitute the missionaries offered.[9]

The instructional programs offered in residential schools were designed to teach European knowledge, skills and behaviours. For female students, the effects of these programs were probably less destructive than they were for males as the disparity in male roles between the traditional and the European lifestyles was greater than that for females. Boys not only lost their male role models by being removed from their families at an early age, but were also taught skills that were not particularly useful, for example, farming skills with limited farming potential on reserves, while the girls were taught skills of homemaking, which were acceptable in both societies. Thus, in the communal society women retained while men lost their traditional roles and were subjected to induced dependency and welfare. The ultimate effect of these attempts at assimilation was to create unequal power relations between Indian men and women.[10]

Alberta has not had residential schools since the 1960s. However, the legacy of the residential experience has influenced the children and grandchildren of those Aboriginals who were removed from their homes for ten months every year to be placed in residential schools operated by strict religious orders.

The Task Force has been told repeatedly of the effect of residential schools on the present generation of Aboriginals. Children were not allowed to wear their own clothing, speak their own language or practice their own customs and traditions. Breaches of the strict codes of discipline resulted in harsh punishments. The boys were not permitted to follow traditional Aboriginal pursuits such as hunting and trapping. All residents of the schools were given a "4-R" education without Aboriginal content (the fourth "R" is Religion). When children returned to their homes from residential schools, they found it difficult or impossible to re-adjust to the Aboriginal life-style. One of the consequences of residential schooling is that whole generations of Aboriginal children lost their sense of identity as Indian or Metis, including culture, spirituality, and the hunting, trapping and gathering skills that would have been passed on to them by their parents.

Residential schools also denied children the opportunity to acquire parenting skills. The short vacations spent at home did not allow for the learning of these skills from their family or extended family.

The effect of residential schooling will remain with Aboriginals for many generations because of their practice of child-rearing by the extended family, which often involves the grandparents. Aboriginals have a strong oral tradition of recording and transferring their history.

Stories of the abuse, segregation, isolation, humiliation and discrimination experienced in residential schools will continue to be passed on from generation to generation.

We have met numerous Aboriginals who come from dysfunctional homes. Some of the characteristics are: parental alcohol problems, inadequate accommodation, lack of discipline or role model and lack of parental control. Many of these families are on welfare, which if used extremely carefully, provides for subsistence without any luxuries. However, the money is often used for other purposes such as alcohol and bingo. Lack of money for extended periods every month causes severe hardship for the whole family, particularly on those between the age of 15 and 19. These youth are the family members who are most likely to come in contact with the criminal justice system for the first time.

The Child Welfare Act of Alberta[11] discourages the placement of Indian children in non-Indian foster homes. This legislation does not apply to Metis. As a consequence, Metis children are still being placed in non-Metis and non-Indian homes.

This discussion of factors is not exhaustive. It is related to other sections of this Report, including the discussion of "The Aboriginal Perspective." The above profile does not apply to all Indian and Metis families, but it does indicate a disturbing pattern that contributes to Indian and Metis people coming into contact with the criminal justice system.

Demographics and Consequences of Population Growth

Demographics

The Constitution Act of 1982 describes the term "Aboriginal people" as including Indian, Metis, and Inuit people. The Task Force has used the term "Aboriginal" to mean Indian and Metis. We also recognize the distinction between registered or status Indians and non-status Indians: a registered Indian is defined as any person who is considered an Indian under the 1951 Indian Act and whose name is recorded in the register maintained by Indian and Northern Affairs Canada. Amendments to the Indian Act 1985 (Bill C-31) restored Indian status and band membership rights to individuals and their children who had lost status and rights because of discriminatory clauses in the Indian Act. The data used in this section of the Report which relate to registered Indians include both "regular" and "Bill C-31" populations.

At the beginning of 1991, forty-three Alberta Indian Bands were registered with the Department of Indian and Northern Affairs Canada. There were ninety-two recognized Indian reserves. In addition, there were eight Metis Settlements and approximately forty other Aboriginal communities. A map of the geographical location of Reserves and Settlements is provided at the end of this section.

Apart from the information on registered Indians held by Indian and Northern Affairs Canada, reliable and up-to-date information is not available for the Aboriginal population of either Alberta or

Canada, particularly for non-status Indian and Metis people. The most comprehensive data on the Aboriginal population of Alberta came from the 1986 census. However, it is recognized that these data are not comparable to those collected by Indian and Northern Affairs Canada; there were problems in enumerating certain Indian reserves and difficulties in defining Aboriginal ancestry.

The 1986 census data indicate that the Aboriginal population of Alberta for that year was estimated to be 113,383, representing about 4.8% of the total population of Alberta. Although the census data record that 43% of that population were "Indian", the census definitions of Aboriginal ancestry were not consistent with the definitions used by the Department of Indian and Northern Affairs Canada (previously called DIAND - Department of Indian and Northern Development). Therefore, the actual composition of the Aboriginal population remains uncertain.

The 1986 census data reconfirmed the drastic socio-economic deprivation suffered by Aboriginal people compared to the general population of the province – especially in areas of education, labour force activity, income and housing. The census data also indicated differences between the Aboriginal population and the total population of Alberta with respect to age structure. The 1986 Alberta Aboriginal population recorded 50% of its population in the 19 years and under category compared to 31% for the Alberta population as a whole, and 10% of its population in the 45 years and over category compared to 25% for the province. More recent data (1990) on registered Indians from Indian and Northern Affairs Canada support this census picture of a Aboriginal population with half the population under the age of 20.

The census data also indicate that a considerable proportion (44.3%) of the total Aboriginal population live in an urban area, and 31.1% of that total Aboriginal population was recorded as living in Edmonton and Calgary. With respect to registered Indians, current information from September 1990 indicates that 37% of the registered Indian population lives off-reserve.

As stated previously, current reliable information is not available for the total Aboriginal population of Alberta. As of September 3, 1990, the registered Indian population for Alberta was 59,455. A breakdown by Band is provided on the following page. The Metis Settlements population was 3,796 at the end of November 1990. In the absence of data, projections of the Aboriginal population for Alberta have been made by using the medium growth projections for the regular registered Indian population of Alberta as generated by Indian and Northern Affairs Canada, and by applying such growth projections to the 1986 census Aboriginal population. Although questionable, the resulting projections do give an indication of the likely magnitude of the Aboriginal population in the province. The projected total Aboriginal population for Alberta for 1990 is 123,746 or 5.1% of the estimated total Alberta population. Because of the expected higher growth rate of the Aboriginal population compared to the total provincial population, it is projected that by the year 2011, the Aboriginal population of the province will be 203,333 or 6.5% of the total population. In some age categories, for example, the 0 - 19

ALBERTA BAND POPULATION

September 3, 1990
(INDIAN REGISTER POPULATION)

Fort McMurray

Cree Band	1 517
Fort Chipewyan Band	477
Fort McKay Band	356
Fort McMurray Band	320
Janvier Band	395
	3 065

Southern Alberta

Siksika Nation Band	3 851
O'Chiese Band	499
Sarcee Band	976
Stoney (Chiniki) Band	952
Sunchild Cree Band	579
Stoney (Bearspaw) Band	923
Stoney (Goodstoney) Band	1 024
Blood Band	7 155
Peigan Band	2 425
	18 384

Edmonton/Hobbema

Alexis Band	868
Alexander Band	981
Louis Bull Band	1 003
Enoch Band	1 179
Paul Band	1 129
Montana Band	545
Ermineskin Band	2 114
Samson Band	3 966
General List	512
	12 297

Lesser Slave Lake

Horse Lake Band	381
Driftpile Band	1 304
Duncan's Band	97
Grouard Band	162
Lubicon Lake Band	240
Sawridge Band	180
Sturgeon Lake Band	1 312
Sucker Creek Band	1 365
Swan River Band	610
Bigstone Cree Band	3 259
Whitefish Lake Band	1 182
Woodland Cree Band	405
	10 497

St. Paul

Beaver Lake Band	472
Saddle Lake Band	5 705
Cold Lake First Nations	1 528
Frog Lake Band	1 228
Kehewin Band	1 144
Heart Lake Band	172
	10 249

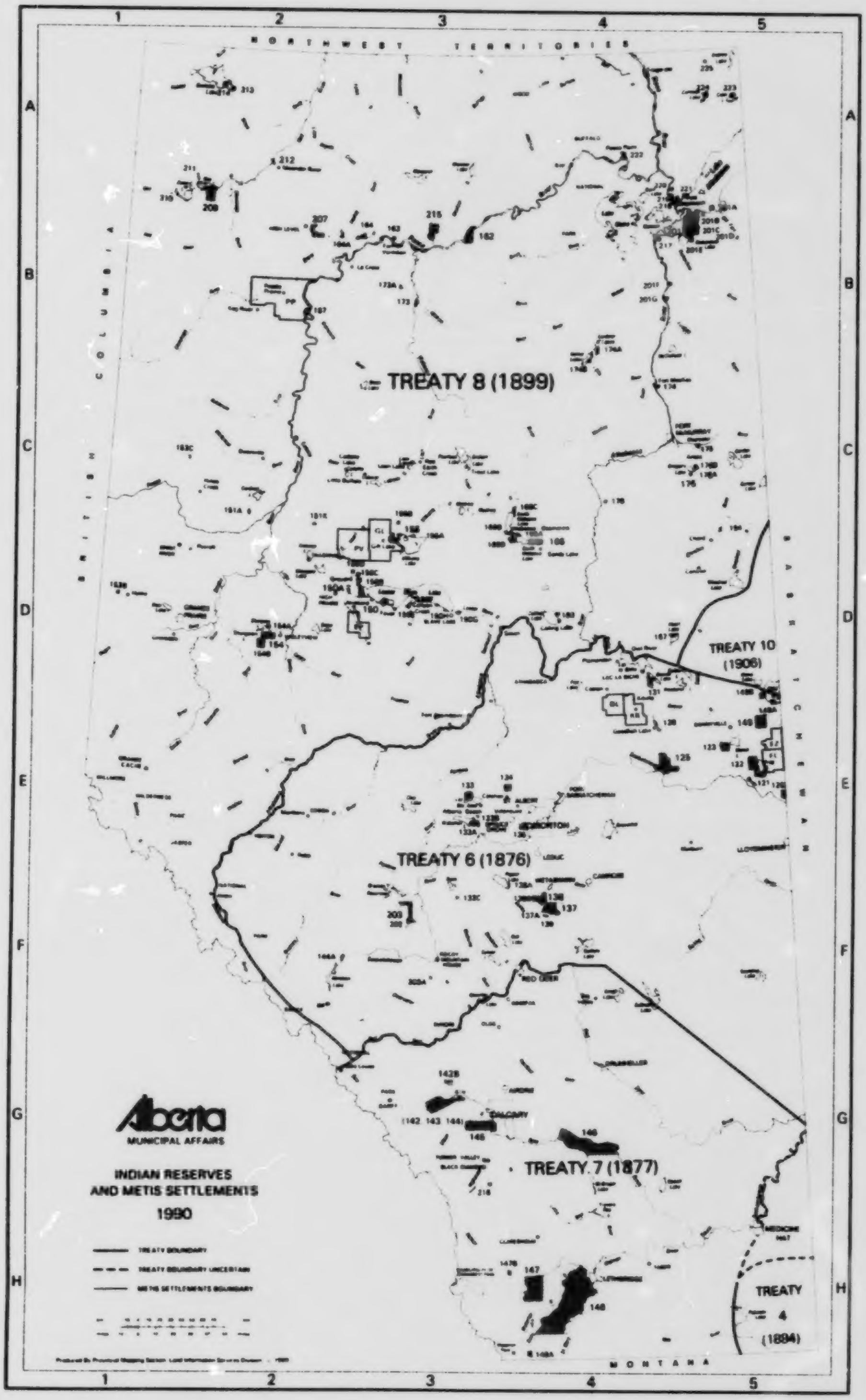
Fort Vermilion

Boyer River Band	512
Tallcree Band	584
Little Red River Band	2 099
Dene Tha' Band	1 768
	4 963

TOTAL ALBERTA INDIAN REGISTER = 59 455

METIS SETTLEMENTS (1989)

Buffalo Lake	497
East Prairie	348
Elizabeth	413
Fishing Lake	415
Gift Lake	442
Kikino	750
Paddle Prairie	583
Peavine	348
	3 796


NORTHWEST TERRITORIES
BRITISH COLUMBIA
SASKATCHEWAN
MONTANA
TREATY 8 (1899)
TREATY 10 (1906)
TREATY 6 (1876)
TREATY 7 (1877)
TREATY 4 (1894)
EDMONTON
RED DEER
CALGARY
LETHBRIDGE
MEDICINE HAT
Alberta
MUNICIPAL AFFAIRS
INDIAN RESERVES AND METIS SETTLEMENTS
1990
TREATY BOUNDARY
TREATY BOUNDARY UNCERTAIN
METIS SETTLEMENTS BOUNDARY
1
2
3
4
5
A
B
C
D
E
F
G
H

INDIAN RESERVES OF ALBERTA
Alphabetical Listing

Alexander	134	E-3
Alexis	133	E-3
Allison Bay	219	A-5
Amber River	211	A-1, A-2
Assineau River	150F	D-3
Beaver Lake	131	D-4
Beaver Ranch	163	B-3
Big Horn	144A	F-2
Bistcho Lake	213	A-2
Blood	148	H-4
Blood	148A	H-4
Boyer	164	B-2,B-3
Buck Lake	133C	F-3
Bishe River	207	B-2
Carcajou Settlement	187	B-2
Charles Lake	225	A-5
Child Lake	164A	B-2
Chipewyan	201	B-5
Chipewyan	201A-E	B-5
Chipewyan	201F-G	B-4
Clear Hills	152C	C-1
Clearwater	175	C-5
Cold Lake	149	E-5
Cold Lake	149A-B	D-5
Colin Lake	223	A-5
Cornwall Lake	224	A-5
Devil's Gate	220	A-5
Dog Head	218	A-4
Drift Pile River	150	D-3
Duncans	151A	C-2
Eden Valley	216	G-3
Ermineskin	138	F-4
Fort McKay	174	C-4
Fox Lake	162	B-3
Freeman	150B	D-3
Gregoire Lake	176	C-5
Gregoire Lake	176A-B	C-5
Halcro	150C	D-2,D-3
Hay Lake	209	A-2,B-2
Heart Lake	167	D-4
Horse Lakes	152B	D-1
House River Indian Cemetery	178	C-4
Jackfish Point	214	A-2
Janvier	194	C-5
Jean Baptiste Gambler	183	D-4
John D'or Prairie	215	B-3
Kehewin	123	E-5
Louis Bull	138B	F-4
Makaoo	120	E-5
Montana	139	F-4
Namur Lake	174B	B-4
Namur River	174A	B-4
O'Chiese	203	F-3
O'Chiese Cemetery	203A	F-3
Old Fort	217	B-4
Pakashan	150D	D-2
Peace Point	222	A-4
Peigan	147	H-4
Peigan (timber limit)	147B	H-3
Pigeon Lake	138A	F-3
Puskiakiwenin	122	E-5
Sand Point	221	A-5
Saddle Lake	125	E-4, E-5
Samson	137	F-4
Samson	137A	F-4
Sarcee	145	G-3
Sawridge	150G-H	D-3
Siksika	146	G-4
Stoney	142, 143, 144	G-3
Stoney	142B	G-3
Stony Plain	135	E-4
Sturgeon Lake	154	D-2
Sturgeon Lake	154A-B	D-2
Sucker Creek	150A	D-2,D-3
Sunchild	202	F-3
Swan River	150E	D-3
Tall Cree	173	B-3
Tall Cree	173A	B-3
Unipouheos	121	E-5
Upper Hay River	212	A-2
Utikoomak Lake	155	D-3
Utikoomak Lake	155A	D-3
Utikoomak Lake	155B	C-3
Wabamun	133A-B	E-3
Wabasca	166	D-4
Wabasca	166A	D-4
Wabasca	166B	C-3,D-3
Wabasca	166C	C-3
Wabasca	166D	D-3
White Fish Lake	128	E-4
William McKenzie	151K	C-2
Zama Lake	210	A-1,B-1

INDIAN RESERVES OF ALBERTA
Numerical Listing

120	Makaoo	E-5
121	Unipouheous	E-5
122	Puskiakiwenin	E-5
123	Kehewin	E-5
125	Saddle Lake	E-4,E-5
128	Whitefish Lake	E-4
131	Beaver Lake	D-4
133	Alexis	E-3
133A-B	Wabamun	E-3
133C	Buck Lake	F-3
134	Alexander	E-3
135	Stony Plain	E-4
137	Samson	F-4
137A	Samson	F-4
138	Ermineskin	F-4
138A	Pigeon Lake	F-3
138B	Louis Bull	F-4
139	Montana	F-4
142	Stoney (142,143,144)	G-3
142B	Stoney	G-3
144A	Big Horn	F-2
145	Sarcee	G-3
146	Siksika	G-4
147	Peigan	H-4
147B	Peigan (timber limit)	H-3
148	Blood	H-4
148B	Blood	H-4
149	Cold Lake	E-5
149A-B	Cold Lake	D-5
150	Drift Pile River	D-3
150A	Sucker Creek	D-2,D-3
150B	Freeman	D-3
150C	Halcro	D-2,D-3
150D	Pakashan	D-2
150E	Swan River	D-3
150F	Assineau River	D-3
150G-H	Sawridge	D-3
151A	Duncans	C-2
151K	Wm. McKenzie	C-2
152B	Horse Lakes	D-1
152C	Clear Hills	C-1
154	Sturgeon Lake	D-2
155A	Utikoomak Lake	D-3
155B	Utikoomak Lake	C-3
162	Fox Lake	B-3
163	Beaver Ranch	B-3
164	Boyer	B-2,B-3
164B	Child Lake	B-2
166	Wabasca	D-4
166A	Wabasca	D-4
166B	Wabasca	C-3,D-3
166C	Wabasca	C-3
166D	Wabasca	D-3
167	Heart Lake	D-4
172	Tall Cree	B-3
173A	Tall Cree	B-3
174	Fort McKay	C-4
174A	Namur River	B-4
174B	Namur Lake	B-4
175	Clearwater	C-5
176	Gregoire Lake	C-5
176A-B	Gregoire Lake	C-5
178	House River Indian Cemetery	C-4
183	John Baptiste Gambler	D-4
187	Carcajou Settlement	B-2
194	Janvier	C-5
201	Chipewyan	B-5
201A-E	Chipewyan	B-5
201F-G	Chipewyan	B-4
202	Sunchild	F-3
203	O'Chiese	F-3
203A	O'Chiese Cemetery	F-3
207	Bushe River	B-2
209	Hay Lake	A-2,B-2
210	Zama Lake	A-1,B-1
211	Amber River	A-1,A-2
212	Upper Hay River	A-2
213	Bistcho Lake	A-2
214	Jackfish Point	A-2
215	John D'or Prairie	B-3
216	Eden Valley	G-3
217	Old Fort	B-4
218	Dog Head	A-4
219	Allison Bay	A-5
220	Devil's Gate	A-5
221	Sand Point	A-5
222	Peace Point	A-5
223	Colin Lake	A-5
224	Cornwall Lake	A-5
225	Charles Lake	A-5

METIS SETTLEMENTS

BL	Buffalo Lake
EP	East Prairie
EZ	Elizabeth
FL	Fishing Lake
GL	Gift Lake
KK	Kikino
PP	Paddle Prairie
PV	Peavine

years age group, the Aboriginal population will represent nearly 11% of the total provincial population in that age group.

The growth of the Aboriginal population, its relative youth compared to the total provincial population, the socio-economic disadvantaged nature of that population, and the current level of involvement of that population in the social welfare and criminal justice systems combine to present a very pessimistic picture for Aboriginal people in the future. This scenario can only improve if significant changes occur.

Aboriginal Population Growth and its Consequences for the Criminal Justice System

The potential size of the Aboriginal population in the future and its rate of growth compared to that of non-Aboriginals must be considered in the review of the involvement of Aboriginal people with the criminal justice system and in the projection of their future involvement.

Table 1 shows that the Aboriginal population in Alberta is expected to increase by 64.3% during the period 1990 - 2011, compared to a 25.1% increase for the non-Aboriginal population. Such growth would mean that by the year 2011, Aboriginal people would account for 6.5% of the Alberta population, compared to 5.1% in 1990. The Aboriginal population is expected to grow at a faster rate than the non-Aboriginal population in all age categories. The growth rate in the older age categories is high for both populations. However, more significant differences occur in the younger age groups. For example, in the under-19 group, the Aboriginal population is expected to grow from 60,310 in 1990 to 81,213 in 2011 an increase of 34.7%. The non-Aboriginal population is projected to decline from 693,890 in 1990 to 667,587 in 2011 – a decrease of 3.8%. This means that the proportion of Aboriginals in the under 19 years age group will increase from 8.0% in 1990 to 10.8% in 2011.

This high projected growth rate for the Aboriginal population has important consequences for any social welfare or criminal justice system that has a large Aboriginal client group, particularly when young Aboriginals are concerned.

Table 2 shows an example of the projected demands on the criminal justice system. If the actual number of admissions to provincial and federal correctional facilities in Alberta for adult and young offenders for 1989 is compared with the projected Aboriginal and non-Aboriginal populations for that year, a rate of admissions per 1,000 of the population for Aboriginal and non-Aboriginal offenders can be calculated from the Table. It is evident that the rates of admission per 1,000 population for the various age groups for Aboriginal offenders are extremely high compared to the rates for non-Aboriginal offenders.

Aboriginal offenders had a rate of admission of 91.2 admissions per 1,000 total population. This rate was eight times higher than the admission rate for the non-Aboriginal population (11.4 admissions per 1,000 total population). For the 12 - 18 years age category, the Aboriginal rate of admission was 5.9 times higher than the non-Aboriginal rate; for the 19 - 24 year age category, the rate was 5.4 times higher; for the 25 - 34 year age

TABLE 1

POPULATION PROJECTIONS FOR ABORIGINAL AND NON-ABORIGINAL PEOPLE IN ALBERTA 1990 AND 2011

Age Categories	1990		2011		% Change 1990 to 2011	
	Native[a]	Non-Native[b]	Native	Non-Native	Native	Non-Native
0 - 14 (% of total population)	47 709 (8.2)	534 791 (91.8)	62 458 (11.3)	488 242 (88.7)	+30.9	-8.7
15 - 19 (% of total population)	12 601 (7.3)	159 099 (92.7)	18 755 (9.5)	179 345 (90.5)	+48.8	+12.7
20 - 24 (% of total population)	12 523 (7.1)	164 377 (92.9)	18 033 (7.8)	213 967 (92.2)	+44.0	+30.2
25 - 34 (% of total population)	24 277 (5.1)	452 623 (94.9)	35 745 (7.6)	433 355 (92.4)	+47.2	-4.3
35 - 44 (% of total population)	13 556 (3.4)	381 044 (96.6)	30 742 (7.5)	377 358 (92.5)	+126.8	-1.0
45 - 64 (% of total population)	10 286 (2.4)	416 214 (97.6)	32 022 (3.7)	840 178 (96.3)	+211.3	+101.9
65+ (% of total population)	2 794 (1.3)	213 006 (98.7)	5 578 (1.5)	371 922 (98.5)	+99.6	+74.6
TOTAL (% of total population)	123 746 (5.1)	2 321 254 (94.9)	203 333 (6.5)	2 904 367 (93.4)	+64.3	+25.1

[a] Projections for the Aboriginal population are based on the 1986 Census figures for the Aboriginal population of Alberta and on the application of the medium population growth scenario for regular registered Indians published by Indian and Northern Affairs Canada in January, 1990. *(The regular registered Indian projections were used to exclude unusual growth patterns caused by the registering of 'Bill C31' Indians.)*

[b] The population data for the non-Aboriginal population were obtained from the population projections for Alberta published by the Alberta Bureau of Statistics in May 1988. Aboriginal population projections were subtracted from these total populations.

TABLE 2

RATE OF OFFENDER ADMISSIONS PER 1,000 OF THE POPULATION FOR ALBERTA, 1989 AND 2011

	1989						2011					
	NATIVE			NON-NATIVE			NATIVE			NON-NATIVE		
Age Structure (Years)	No. of Offend.	Pop.	Rate /1000 Pop.	No. of Offend.	Pop.	Rate /1000 Pop.	No. of Offend.	Pop.	Rate /1000 Pop.	No. of Offend.	Pop.	Rate /1000 Pop.
12 - 18[a]	1 893	26 680	71.0	3 899	322 520	12.1	2 766	38 968	71.0	4 137	342 212	12.1
19 - 24[b]	3 273	12 450	262.9	8 159	168 850	48.3	4 741	18 033	262.9	10 339	213 967	48.3
25 - 34	3 724	23 148	160.9	9 188	461 152	19.9	5 751	35 745	160.9	8 634	433 355	19.9
35 - 44	1 527	12 873	118.6	3 411	362 927	9.4	3 647	30 742	118.6	3 547	377 358	9.4
45+	551	12 577	43.8	1 529	613 923	2.5	1 647	37 600	43.8	3 019	1 212 100	2.5
Total Population (0 - 45+ Years)	10 968	120 239	91.2	26 186	2 298 061	11.4	18 552	203 333	91.2	29 676	2 904 367	10.2

[a] For this age category the admission data are for the 12 - 18 year age group and the population data are for the 10 - 19 year age group.

[b] For this age category the admission data are for the 19 - 24 year age group and the population data are for the 20 - 24 year age group.

category, the rate was 8.1 times higher; for the 35 - 44 year age category, the rate was 12.6 times higher, and for the 45 years and over category, the rate was 17.5 times higher.

The difference in the rates of admissions between the Aboriginal and non-Aboriginal populations is enormous. Even though there may be some question about the accuracy of the projections for the Aboriginal population, the difference in the admission rates is so significant that it is almost possible to discount any inaccuracies. For example, for the 1989 Aboriginal rate of admission to be only twice the rate for non-Aboriginal offenders, the 1989 Aboriginal population would have to be increased from 120,239 to 481,053. Inaccuracies of this extent are unlikely to occur.

If, for the sake of projection, the assumption is made that there is no change in the rate of admissions between the Aboriginal and non-Aboriginal populations between 1989 and 2011, then the projected number of Aboriginal and non-Aboriginal admissions to Provincial and Federal Correctional facilities can be calculated by using the 1989 admission rates. Tables 2 and 3 illustrate these projections.

Projections indicate that by the year 2011, Aboriginal offenders will account for 18,552 (38.5%) of all admissions to federal and provincial correctional centres in Alberta, compared to 29.5% of all such offenders in 1989. The Aboriginal offender admission population is expected to increase by 69.1% from 10,968 in 1989 to 18,552 in 2011, compared to a 13.3% increase for the non-Aboriginal population. In some age categories, for example the 12 - 18 years age group, Aboriginal offenders are projected to account for 40.0% of the admission population to correctional facilities by the year 2011. In other age categories such as the 35 - 44 age group, Aboriginal offenders are projected to account for nearly 51% of the admission population.

These demographics do not only have an impact on the criminal justice system. The Provincial Child Welfare System will also be affected significantly. The Alberta Department of Family and Social Services indicated, for example, that at the end of November, 1990 34% of the children receiving services were Aboriginal; 43% of children in care were Aboriginal; and 47% of permanent guardianship orders concerned Aboriginal children. Obviously, growth in the Aboriginal population under 18 years of age will also have a significant impact on this system.

The examples show clearly that, if no substantive actions are taken to change the involvement of Aboriginal people with the criminal justice or social welfare systems, those systems can expect increased involvement with Aboriginal people at an ever-increasing cost. With respect to the criminal justice system, the projected increase in the number of Aboriginal admissions to correctional facilities from 1989 to 2011 is expected to be 7,584. A rough estimate, using an average length of time in custody of 30 days and an average cost per day of $100.00, indicates that the increase in Aboriginal offender admissions alone would cost an extra $22,752,000. This figure does not include inflation.

These costs – the financial costs to society as a whole and the human cost to the Aboriginal community in particular – are extremely high. Such non-productive costs must be weighed against the increasing needs of the aging society as a whole. This need is characterized in particular by the

TABLE 3

PROJECTIONS OF THE NUMBER OF ADMISSIONS TO ALBERTA PROVINCIAL AND FEDERAL CORRECTIONAL FACILITIES IN 2011

Age Structure (Years)	Number of Admissions to Provincial/Federal Correctional Facilities					
	1989 (Actual)			2011 (Projected)		
	Native	Non-Native	Total	Native	Non-Native	Total
12 - 18	1 893	3 899	5 792	2 766	4 137	6 903
(% row)	(32.7)	(67.3)	(100.0)	(40.1)	(59.9)	(100.0)
19 - 24	3 273	8 159	11 432	4 741	10 339	15 080
(% row)	(28.6)	(71.4)	(100.0)	(31.4)	(68.6)	(100.0)
25 - 34	3 724	9 188	12 912	5 751	8 634	14 385
(% row)	(28.8)	(71.2)	(100.0)	(40.0)	(60.0)	(100.0)
35 - 44	1 527	3 411	4 938	3 647	3 547	7 194
(% row)	(30.9)	(69.1)	(100.0)	(50.7)	(49.3)	(100.0)
45+	551	1 529	2 080	1 647	3 019	4 666
(% row)	(26.5)	(73.5)	(100.0)	(35.3)	(64.7)	(100.0)
Total Offender Population	10 968	26 186	37 154	18 552	29 676	48 228
(% row)	(29.5)	(70.5)	(100.0)	(38.5)	(61.5)	(100.0)

non-Aboriginal population which is aging into the dependent age groups without a corresponding increase in the age group available for work.

It would appear that, on the one hand, the rapid growth of the Aboriginal population can cost the government through increased demands on social welfare and criminal justice systems. In this case, there would be no apparent benefit to any part of society. On the other hand, funds can be channelled into educational and employment opportunities for Aboriginal people. Such measures would have a potential future benefit for society as a whole.

The Urbanization of Indian and Metis People

When the Indian Reserves were established in Alberta, the province had no large urban centres. Several urban centres have developed near reserves. Examples are: Lethbridge (Blood Reserve), Calgary (Sarcee), Wetaskiwin (Hobbema), Edmonton (Enoch), and Fort McMurray (Fort McKay). There are several reasons which explain why Aboriginals do not necessarily stay in their own communities. Some of the most compelling responses are the living conditions in some communities, including the levels of education, health care and unemployment. These factors have resulted in a steady and increasing migration from Aboriginal communities to urban areas.

One startling example is the City of Wetaskiwin. The 1986 census showed 150 Indian and Metis living in Wetaskiwin. The current estimate is 1,800. This exodus away from Reserves has many causes. There is little, if anything on the Reserves to encourage an Indian to remain. The houses on the reserves and the reserves themselves are over-crowded. Housing allocation on a reserve is controlled by the Band Council. We have heard of instances of housing, land and work being given[12] to friends and relatives of Band Council members.

Aboriginal migration from reserves and settlements to urban areas frequently results in Aboriginals becoming involved in the "inner-city lifestyle" which is characterized by poor housing and high crime rates. Most of those who move to the cities are the younger Aboriginals looking for a better way of life, including better health care, educational opportunities, and employment.

The flow to urban centres has implications for municipal government. Urban municipalities must recognize the trend, and be prepared for an influx of Indian and Metis people. The trend toward urbanization of Aboriginals will have an impact on health care, schools, social services, and business.

The Task Force Recommends:

8.9 That Aboriginal communities be assisted in establishing a viable economic base to provide employment and that incentives be provided to Aboriginals for remaining in the community.

8.10 That, because many Aboriginal communities have an inadequate resource and economic base, the resources available be allocated equitably and without favour.

8.11 That urban centres recognize and be prepared for a continuing influx of Aboriginals.

Indian and Metis Leadership

Indian Reserves are governed by a Chief and Councillors. The number of councillors is determined by the number of residents on the Reserve. Metis Settlements are governed by Settlement Councils which operate much like a Municipal Council. Indian and Metis councils have committees to provide for services such as health, welfare, police, roads and utilities. There is only a small pool of leaders on the Reserves and Settlements. A small but increasing number of students attend University and Community Colleges. When they graduate, they often do not return to the Reserves and Settlements as they obtain employment in the non-Aboriginal community. Government departments such as Health and Welfare or Wildlife, and organizations such as the R.C.M.P., municipal police, provincial and federal correctional services and parole recruit promising Aboriginals. The frequent result is that they are removed from their communities.

As a Task Force, we have been impressed with the high calibre of the Chiefs and Councillors we met. They are well-informed with respect to their responsibilities and duties. Our meetings with Chiefs and Councillors have been very productive.

The siphoning-off of potential leaders limits the role models available to Aboriginal youth. Lacking role models, young Aboriginals can easily become subject to peer pressure which may lead to involvement with the criminal justice system.

The Indian and Metis communities have developed strong national, provincial and local associations which provide political leadership in dealings with governments at all levels. These organizations are particularly active with respect to Aboriginal and Treaty rights. Many of the leaders of these organizations are, of necessity, removed from their reserves or settlements. Although they make substantial contributions on the national and provincial scene, their leadership qualities are not readily available to their home communities.

Aboriginal youth require positive role models. They can identify with those Aboriginals who have succeeded. However, when success or advancement causes those who provide role models to leave the community, the community suffers.

Racism

The Task Force views racism as consisting of racial prejudice – the attitudinal pre-disposition to respond in a certain way; and racial discrimination – the acting out or application of this prejudice. Racism becomes evident when racial prejudice leads to individual or systemic discrimination. The Marshall Inquiry noted that racism has traditionally been a particular problem for the legal system. The Marshall Inquiry observed that:

> *Discrimination is a paradoxical phenomenon; it may be obvious, but it can be very difficult to prove.*[13]

Discrimination, as a practice, usually takes two forms. The first is direct or overt discrimination, which is usually intended. The second is indirect or systemic discrimination, which is usually unconscious or unintended. Although the two types of discrimination are distinct, victims of racism usually do not distinguish between them. The Dene Tha'

Band of Assumption made the following comments:

> *How many of the people serving the Criminal Justice System at all levels are Native? The answer to that question will indicate the degree of racism in the Criminal Justice System. Lawyers, crown prosecutors and police are not discreet. People's past criminal records are discussed with other people in front of community members. It's like they're just a bunch of stupid Indians. (21) They mimic the broken English of the Natives or tell jokes with a racial slur. A joke going around town this winter: 'What did the Creator tell his Indian children? Answer: Don't do anything until I get back.' If we are looking at the whole system, we need to look at this.*[14]

The Brief from the Oblates of Mary Immaculate Justice and Peace Committee also addresses discrimination:

> *Through our relationships with Native people we are very aware of the extent to which racism is alive in our society. The roots of this racism extend back to the first encounters between Europeans and Native people. It continues in the assumption of the superiority of a criminal justice system based on British common law; in the resistance to the acceptance of Native traditions and spirituality; in the attitude that, 'it is their problem' when addressing alcoholism, suicide, unemployment on reserves or among urban Natives. It is our position that until racism among us is recognized and diminished then the statistics of over representation in the criminal justice system will not be changed appreciably. A focus on having Native peoples becoming part of the system as police, correctional officers, lawyers, etc. can be a form of racism. For one expression of racism is to make the traditions and systems of the dominant society determinant for all.*[15]

Associate Chief Judge Murray Sinclair, of the Provincial Court of Manitoba and co-chairman of the Manitoba Aboriginal Justice Inquiry, addressed the topic of systemic discrimination:

> *Systemic discrimination is not a particularly well understood phenomenon - its utility and application has so far been confined to the field of employment law and practices. But even drawing upon the various legal analogies which arise from the field of employment law, one can come to some small understanding of what is meant by systemic discrimination. Simply put, systemic discrimination is discrimination which arises from the adverse impact upon an identifiable group within society by the systematic application of supposedly neutral criteria. Discrimination is by definition, adverse selection.*[16]

As observed by the Marshall Inquiry, discrimination is difficult to prove. Often, aggregate statistical analysis must be conducted to make it visible. Judge Sinclair states:

> *Within the administration of justice the statistical evidence of over-representation by aboriginal people in our institutions is a fair indication that the system's use of its criteria for client selection and method of treatment warrant review. Simply put, evidence of adverse impact, in the absence of any reasonable and proven alternative explanation is proof of systemic discrimination.*[17]

Discrimination is often subtle and non-visible. Nevertheless, statistical analysis allows conclusions to be drawn about systemic discrimination. The Task Force concludes that racism, however indirect or subtle, is prevalent in our society. We are also of the opinion that the criminal justice system is a microcosm of the larger society. Thus, any racial prejudice that exists in society at large also exists in the criminal justice system.

Racial prejudice is also reflected in the area of employment. While Aboriginal offenders in the criminal justice system are over-represented, Aboriginals as employees are under-represented. The Canadian Human Rights Commission observed in its Brief:

> *The need for public service institutions adequately to reflect the composition of the community they serve is an elementary proposition for a society that values human rights. Since 1986, it has become federal law under Canada's Employment Equity Act. Statistics show that aboriginal peoples remain the single most under-represented group in the federal workforce at large, and the justice system is no exception.*[18]

During visits to communities and correctional centres' the Task Force heard many anecdotal accounts of racism experienced by Aboriginal people. It is clear to us most Aboriginals perceive of the existence of racism.

The failure of the criminal justice system to deal effectively with Aboriginal people has led to the call for an Aboriginal Justice System. In addressing this issue, the Canadian Human Rights Commission stated:

> *In the face of substantial evidence that the mainstream justice system has failed Canada's Aboriginal peoples in matters of judicial fairness, correctional and rehabilitation treatment, decent policing standards, and so on, many legal experts, human rights advocates and native spokespeople have called for a degree of autonomy for native justice. This is also consistent with growing demands for Aboriginal self-government, including the devolution of powers through the government's 'community self-government' policy.*[19]

The Task Force believes that Aboriginal people are exposed daily to racism in our society. This racism exists in the criminal justice system as it does in the larger society. Ignorance of Aboriginal people and the issues and problems faced by Aboriginal people appear to be a large part of the problem of racism.

The Task Force Recommends:

8.12 That Aboriginal awareness seminars and programs be provided to sensitize all criminal justice personnel to Aboriginal culture and the issues and problems faced by Aboriginal people. Public education of society at large about these matters is also needed.

8.13 That the criminal justice system employ Aboriginals to ensure fair and equitable representation of Aboriginal people.

8.14 That criminal justice agencies in Alberta establish a firm position to discourage and penalize discriminatory or racist actions or expressions at any level of the criminal justice system.

8.2 Jurisdictional Interaction and Overlap

Term of Reference

Additional Considerations 8(b)

to identify areas of jurisdictional interaction or overlap between the federal and provincial governments that tend to impede actions and decisions within the corrections system to the detriment of Indian and Metis offenders.

The Task Force received Briefs from the Solicitor General of Alberta and Correctional Services of Canada. Neither Brief identified any areas of jurisdictional interaction or overlap detrimental to Indian and Metis offenders.

Section 730 of the Criminal Code of Canada provides that a person who is sentenced to imprisonment for:

a. life
b. a term of two years or more, or
c. two or more terms of less than two years each that are to be served one after the other and that, in the aggregate, amount to two years or more, they shall be sentenced to imprisonment in a penitentiary.

All other sentences are to be served in a provincial institution.

The division of jurisdiction between Canada and the Provinces is not understood by Aboriginals. Indeed, it is not understood by many of those responsible for the operation of the criminal justice system. Divided jurisdiction is difficult to rationalize in 1990.

The Fauteux Report points out the difficulty of divided jurisdiction in a federal state.

> *The British North America Act gives to parliament exclusive legislative jurisdiction over the establishment, maintenance and management of penitentiaries. To the provincial legislature it gives exclusive legislative authority for the establishment, maintenance and management of public and reformatory prisons in and for the province. Parliament has provided, by means of its legislation, that a sentence of imprisonment for two years or more shall be served in a federal penitentiary and that a sentence of less than two years shall be served in a provincial prison or reformatory... The inmates of provincial penal institutions are, of course, confined in institutions in ten separate provinces under the management of ten separate provincial governments.*[20]

This artificial distinction may have been valid in 1867, but to contemporary Aboriginals it is problematic.

Judges decide whether a prisoner goes to a penitentiary or a provincial institution. The decentralized penitentiary placement process merely determines to which institution a federally sentenced inmate is sent. Decisions about institutional placement are made based on the program and security requirements of each case. Inmates are matched with the institution that most closely approximates their needs with respect to these general criteria.

The Task Force recognizes the need for various degrees of security within institutions. However, like most of the people we interviewed in the Criminal Justice System, we consider the two year requirement to be an historical anomaly. We would suggest that the following factors be considered when placement is determined for offenders:

A. **[The degree of security required.]** Prison administrators have told us that they have high risk offenders in the provincial correctional institutions. Administrators in the penitentiary system have told us that they have minimum risk prisoners in their institution. We have also been told that under the Exchange of Services Agreement, the Province is reluctant to accept low-risk long-term prisoners.

B. **[Appropriate programming.]** If the goal of rehabilitating prisoners is to be taken seriously, correctional systems should respond by placing a prisoner in the institution which can provide the most appropriate programming. Aboriginals require programming which is culturally sensitive and which prepares them for release into their home community.

C. **[Proximity to the prisoner's home community, whether this is a Reserve, Settlement or urban area.]** This is particularly important for Aboriginal people because of the culture shock they experience when they enter the correctional centre.

One of the major themes of the recommendations the Task Force made with respect to corrections is that they should be community-oriented. It is possible to locate correctional facilities on or close to reserves and settlements. However, the small numbers involved make it impractical to establish medium or maximum penitentiaries close to or on reserves or settlements.

The Correctional Service of Canada and the Solicitor General's Department of Alberta have an Exchange of Service Agreement which covers federal offenders who are transferred to provincial facilities for humanitarian or program reasons. Offenders selected for placement with the Province must be referred by the penitentiary placement officer and accepted by Alberta before an exchange can take place. This agreement is believed to have been of assistance to a number of Aboriginal people, particularly to those from more isolated regions who can be held, for example, at Peace River or Grande Cache.

Correction Services Canada and the Alberta Solicitor General also have a Community Services Agreement. It is through this agreement that Alberta Correctional Service assumes responsibility for direct parole supervision throughout the province of Alberta. Alberta is required to sub-contract to the non-profit sector a minimum of ten percent of the supervision cases available. One of the agencies with whom such a contract exists is Native Counselling Services of Alberta which now provides such services in Edmonton and High Level. The agreement is based on the principle that Aboriginal supervising agencies be used to the greatest extent possible. Responses to our inquiries suggest that the Community Services Agreement functions relatively well. It has created bureaucratic and administrative problems, but these problems do not hinder actions and decisions, and no detriment to Aboriginal offenders results.

Grierson Centre, a forty-bed minimum security institution for Aboriginal offenders' was established under the Community Service Agreement. There are three parties to this agreement:

Correctional Service of Canada, the Alberta Correctional Service, and Native Counselling Services of Alberta. Twenty-eight of the forty beds are guaranteed by the Correctional Service of Canada and twelve are guaranteed by Alberta Correctional Service. Of the twenty-eight Correctional Service of Canada beds, ten are reserved for Aboriginal offenders who have inmate status, and eighteen are reserved for Aboriginal offenders who have been granted day parole by the National Parole Board.

The Task Force visited Grierson Centre and was impressed with the old, but adequate physical facilities, the attitude of the staff, and the apparent good relationship between the staff and the inmates. The Aboriginals in the institution appear to be very comfortable with the facility; the Task Force was advised that the unlawfully-at-large and parole suspension rates have been reduced. We were impressed by the fact that Grierson Centre is staffed by Aboriginals. In addition, programs of Grierson Centre address the underlying factors related to the causes of Aboriginal criminal behaviour. Whenever possible, these programs are designed, developed, and delivered by Aboriginal people for Aboriginal people. Grierson Centre reflects most of the concepts held by this Task Force with respect to corrections and Aboriginal people.

Some of the service agencies told the Task Force that the division of jurisdiction between the Correctional Service of Canada and the Solicitor General's Department presents a problem with respect to obtaining funds. Possible consequnces are a lack of long-range planning and a lack of consistency in the delivery of programs.

The Task Force notes a high degree of co-operation between the Correctional Service of Canada and the Solicitor General of Alberta with respect to corrections. The existence of two separate correctional systems has the potential to create or magnify jurisdictional interaction or overlap. It creates two bureaucracies responsible to different levels of government and it requires different institutions. The potential for inefficiencies exist. However, if there are inefficiencies, they do not appear to impede actions and decisions detrimental to Aboriginal offenders.

8.3 Government Departments - Services

Term of Reference:

Additional Considerations 8(c)

to determine how the various departments of the Government of Alberta that provide services to Indian and Metis people can more effectively coordinate various services and programs to the benefit of the Indian and Metis people in such a manner as to reduce the number of Indian and Metis people coming into contact with the criminal justice system.

We approach the question of the role of government under the assumption that any government service or program which is not delivered effectively to Aboriginal people can contribute to their coming into contact with the criminal justice system. The Department of the Attorney General and the Department of the Solicitor General are the primary government departments involved with Aboriginals in conflict with the criminal justice system. There appears to be effective liaison between these departments, as well as effective co-ordination of the services and programs they provide.

The Task Force has met with representatives of the provincial Departments of the Attorney General, Solicitor General, Advanced Education, Health, Education, Consumer and Corporate Affairs, Family and Social Services, Forestry, Lands and Wildlife, Northern Alberta Development Council, Municipal Affairs, Career Development and Employment, and with the federal Department of Indian Affairs and Northern Development. We also had an opportunity to meet with the Government Caucus Committee on Native Affairs.

We observed that many government departments work in similar areas with a marked lack of cohesiveness in meeting common objectives. Apparently, one of the problems is that several departments are funding similar programs. Some of the departments have a philosophy and policy for dealing with Aboriginals, while other departments seem to do so on an ad hoc basis.

The Department of the Solicitor General has a policy statement on correctional programs for Aboriginal offenders which when implemented will meet many of the concerns expressed by the Task Force. The policy statement of the Department of Education's Native Education Project, provides

> *a vision of pride in heritage, development of self-reliance and an Aboriginal people that walk tall and take their rightful place in the life of this province.*[21]

The policy statements of these two Departments reflect departmental policy, which undoubtedly reflects government policy. Other departments have not provided the Task Force with statements of departmental policy. However, the briefs we received left us with the impression that most government departments have not developed policy with respect to Aboriginals.

In December of 1987, the Government of Alberta and the Metis Association of Alberta entered into a framework agreement. The agreement signalled the Government of Alberta's commitment to work with the Metis Association of Alberta and to assist the Association in its determination to break new ground, particularly toward achieving the primary goals of self-sufficiency and self-determination. Originally, the framework agreement covered a period of one year. In December of 1988, it was renewed for an additional year. One year later, in December of 1989, renewal covered another three years. The framework agreement enables the Metis people to participate meaningfully in the Government's decision making process. Furthermore, the agreement includes funding to provide the necessary resources. Because of the agreement, the Metis Association of Alberta can play a much more active role in joint planning and initiation of its own policies, priorities, programs and services. A joint committee composed of the Deputy Minister of the Executive Council and the President of the Metis Association was created to ensure the effective pursuit of the agreement's full potential.

On July 1st, 1989 the Province of Alberta and the Metis Settlements entered into the Alberta Metis Settlements Accord which has resulted in the enactment of the Constitution of Alberta Amendment Act

1990, the Metis Settlement Act, the Metis Settlements Accord Implementation Act and the Metis Settlements Land Protection Act. Eight Metis Settlements have been established in Alberta on land dedicated by the Province. The Settlements are governed by Settlement Councils with powers similar to those of municipal governments. Long-term funding has been guaranteed to the Settlements to enable them to become completely self-governing and self-sufficient within seven years.

The Government of Canada acknowledges Constitutional responsibility for Indians on reserves, but it does not acknowledge any responsibility for Metis. Off-reserve Indians are therefore, by default, the responsibility of provincial or municipal governments. These responsibilities are not clearly defined whereas the Government of Canada and the Indians recognize that a trust and fiduciary relationship exists between them, based on the Constitution Acts, the Treaties, and the interpretations of their relationship as defined by the Supreme Court of Canada.

Representatives of the Government of Alberta have advised the Task Force that the Metis, through the Metis Association of Alberta, the Federation of Metis Settlements and the framework agreement, are very skilled in dealing with the provincial government, and know how to obtain government services and funding. On the other hand, the Government of Alberta finds it difficult to deal with the Indians who represent three different Treaty areas, several Tribal Councils, and forty-five individual Bands. The difficulty arises mainly because the Indians have traditionally been the responsibility of the federal government.

Difficulties could arise because of the organizational framework used by the Government of Alberta for dealing with Indians. The Minister responsible for Native Affairs in the province is the Attorney General, who is also responsible for prosecuting all cases coming to Court. In addition, the Attorney General plays a major role with respect to land claims.

The Deputy Minister reporting to the Attorney General in his capacity of Minister responsible for Native Affairs is a Deputy Minister of the Department of Municipal Affairs. The main contact between Government and Indians is the Executive Director of the Native Services Unit, who is located in the Native Services Division of the Department of Municipal Affairs. It would appear that the Executive Director of this Unit does not have direct access to the Minister responsible for Native Affairs. As a consequence, any initiatives must go from the Executive Director to the Deputy Minister of Municipal Affairs, and then to the Attorney General in his capacity of Minister responsible for Native Affairs.

The Task Force met with the Government Caucus Committee on Native Affairs. This is a relatively new committee. Their suggested terms of reference are:

A. Meet with delegations representing native people to hear their concerns and recommendations relative to provincial government policy, programs and legislation.

B. Assist and advise the Ministers responsible for native issues on matters pertaining to legislation, programs and policy.

C. Endeavour to assist in identifying opportunities for increased coordination, efficiency, and effectiveness in the delivery of services to native people by provincial government departments.

D. Assist the Ministers responsible for native issues in attending conferences, seminars, and events, and in communicating with the native community.

At our meeting with the Government Caucus Committee on Native Affairs, we were told that the Government has made no move to establish a separate department for Aboriginal Affairs. The rationale was that the department would become isolated, and Aboriginals would be removed from mainstream government initiatives. The Caucus Committee had the impression that the Government of Canada was anxious to see the province accept greater responsibility for Indians. However, there does not seem to be any stated federal policy on this matter.

The Government Caucus Committee advised us that the provincial government had not taken a comprehensive position with respect to Indian and Metis and in particular there is no broad government policy regarding Indian and Metis employment or affirmative action programs.

The Task Force has not been able to detect any branch of the government charged with the responsibility for developing and implementing a provincial Aboriginal policy. There appears to be a lack of commitment to addressing Aboriginal issues at the correct level of government. The Caucus Committee on Native Affairs was unable to give us a clear definition of the province's responsibility for Indians.

British Columbia gives Native Affairs a much higher profile than Alberta. The Premier has a cabinet committee on Native Affairs. The cabinet ministers involved have a role in developing and implementing government policy for Aboriginals. In Alberta, however, the Task Force has seen the problems Indian Bands have in dealing with the various departments. We have also been told of the difficulty government has in dealing with the large number of Bands.

The Task Force sees a need to address policy issues which affect Indians and Metis in a co-ordinated manner with the involvement of the most senior Cabinet Ministers. Government representatives with whom we have met have shown a keen interest in and understanding of the problems involving Aboriginal people. However, in the absence of a co-ordinated, comprehensive government policy statement their positive intentions are often frustrated.

The *Edmonton Journal* has reported that:

> *Attorney General Ken Rostad, the Minister responsible for Native Affairs, said Thursday he will approach Premier Don Getty about forming a full-time ministry to deal with Native issues. I think the time is right to work with the broad Native community ... they need a Minister who can devote full-time ... to advocate for them and spend the time to work with them.*[22]

The *Journal* further reported that Aboriginal leaders welcomed the Attorney General's comments. Chief Roy Whitney of the Sarcee Band, near Calgary, is reported to have said:

> *I think it is a positive step. There are many issues that face us provincially and we need a department we can deal with rather than running throughout provincial departments. I think streamlining it will be that much more efficient.*[23]

The Task Force is of the opinion that the Attorney General has correctly identified the problem, and that the creation of such a ministry would be welcomed by Aboriginals.

On March 5, 1991, the Premier of Alberta announced that Native Affairs will become the responsibility of the

Department of the Solicitor General, which is now administering Corrections, The Liquor Control Board, the Motor Vehicles Branch, Law Enforcement and the Alberta Racing Commission.

Many of the recommendations of this report must be implemented by the Department of the Solicitor General. Although this reallocation of duties from one busy Department to another busy Department has some merit, it does not meet the need identified by the Attorney General and embraced by Indian leaders.

The Task Force is reluctant to recommend the creation of another government department. However, the problems we have identified in this Report, and the conditions we have observed, point to the necessity for the appointment of a Minister of Indian and Metis Affairs. This Minister should not hold any other major portfolio, and should be able to focus primarily on Indian and Metis affairs. The role of the ministry should be the development of policy and evaluation and co-ordination of programs administered by other departments. The department would not be responsible for the delivery of services. The Task Force is of the opinion that such a department would give Indian and Metis affairs a high profile.

The Task Force Recommends:

8.15 That a clear policy statement be developed by Government on the purpose of the criminal justice system in Alberta and that such a statement be accompanied by co-ordinated action from various components of the system to achieve the stated goal.

8.16 That a Minister of Indian and Metis Affairs be appointed.

In the event that this recommendation is not implemented, we suggest two alternatives.

The first alternative is the creation of a Cabinet Committee on Aboriginal Affairs, similar to the Premier's Cabinet Committee in British Columbia. This Committee would then develop and implement policies. The existing Native Services Unit should have ready and easy access to the Committee as a whole or to the Chairman of the Cabinet Committee.

The second alternative is to establish a Commission, Board, or Committee, composed of a senior representative from each government department which deals with Aboriginals, together with representatives from Aboriginal communities. This forum would initiate and monitor programs and services for the Aboriginal communities. It would consult regularly with Indian and Metis leaders and communities. Aboriginal communities would thus have access to Government through the Commission, Board, or Committee.

We see several advantages to these three approaches. The first advantage is that Aboriginal communities would receive the message that the provincial government is genuinely concerned with Aboriginal affairs, and that it is prepared to deal with these affairs in a co-ordinated, efficient manner. Indian and Metis Bands, Settlements, and organizations could contact the department or committee to obtain information and direction with respect to government programs and funding. There would be advantages to government, such as the avoidance of duplicate financing and programs. Government would also be able to deliver co-ordinated services which reflect the established government policy for Aboriginals.

In written briefs and oral presentations, the Task Force received the consistent message that Aboriginals wish to participate and co-operate with government in establishing policies and making decisions affecting them. The Aboriginals do not want merely to be the recipients of the product of the process. They want to be part of the process.

The Task Force Recommends as Alternatives:

8.17 (a1) That a Cabinet Committee on Indian and Metis Affairs be established.

8.18 (a2) That, as a last alternative, a Commission, Board, or Committee of senior representatives of Government, Indians, and Metis be established to address the concerns of Indian and Metis.

8.4 Cross-Cultural Training

Term of Reference

Additional Considerations 8(d)

to review the cross-cultural training provided to the Judiciary, Crown Prosecutors, Legal Aid personnel and Correctional personnel to determine if existing training is adequate and to make any recommendations necessary to ensure the development of comprehensive and effective programs.

Aboriginal awareness training and cross-cultural training have been addressed throughout the Task Force Report and other sections provide additional discussion of these subjects. For example, an in-depth discussion of cross-cultural training provided by police services is contained in the section on Police.

Prosecutors

The Alberta Department of the Attorney General was asked to provide data on the cross-cultural training of Crown Prosecutors. The Department's response indicates that formal education in Native culture does not form part of a trial lawyer's training:

> *The prosecution of criminal cases will, of course, bring people from many ethnic and cultural backgrounds before the Court as witnesses and accused persons. It has never been suggested that in order for the process to be fair, the Prosecutor (or the Judge or the defence lawyer for that matter) should receive general formal training in any particular ethnic culture. The criminal justice system is not ethnocentric in its operation. Rather, it focuses its decisions on the material evidence and only on the evidence brought forward and admitted by the Judge. If a matter concerning the cultural background of a witness or accused person is material to an issue in the case, it may well form part of the evidence in the case. It will then be learned and taken into account by all involved in and for that case. If it is not so material, it should not impact upon any result. Accordingly, formal education in the cultural background of peoples be they Native or members of any other cultural group, does not specifically form part of a trial lawyer's training.*

With respect to Aboriginal awareness training, the Alberta Crown Attorneys Association emphasizes the relatively limited contact of the Prosecutor with the accused person, but recognized the importance of sensitivity to Aboriginal culture in the sentencing process. The Alberta Crown Attorneys Association does not provide regular Aboriginal awareness training to its members. However, such training has been addressed as an area of concern at the Association's Annual Conferences. The theme of the September 1990 Annual Conference was "Native Justice." The Crown Attorneys Association has met with other service providers in the criminal justice system, such as courtworkers to explain how these service providers can assist their clients best by providing the information required by the courts. It is understood that this activity is more one of facilitating the activities of the courts than one of providing Aboriginal awareness training for the Prosecutors.

Justices of the Peace

The Alberta Department of the Attorney General was also asked to provide information on the cross-cultural training offered to Justices of the Peace:

> *A Native cross-cultural awareness seminar was provided to Court Administrators, some of whom are Justices of the Peace, in 1982. No other or subsequent cross-cultural programs, or Native awareness training has been provided to Justices of the Peace.*

Legal Aid Personnel

In response to our request, the Legal Aid Society provided the following information on cross-cultural and Aboriginal awareness training for Legal Aid personnel:

> *A speaker is coming in October of 1990 to provide a seminar to all employees of the Legal Aid Society with respect to cross-cultural problems. This individual spoke previously at a seminar provided by Native Counselling Services where one of our Legal Aid administrators attended. The same Legal Aid administrator and her Secretary are attending class to learn Cree. They find they are also learning a great deal of Native culture at the same time. Many of the other staff have also taken courses through Native Counselling Services.*

Legal Aid Funded Lawyers

The Legal Aid Society lists 2,647 lawyers who provide legal aid services. Because of the significance of the Society, the information on cross-cultural and Aboriginal awareness training provided to lawyers has been addressed in the section on Legal Aid.

Faculties Of Law

The Law faculties of the University of Alberta and the University of Calgary provided the following responses to our request for information on Aboriginal awareness training for student lawyers:

A. University of Alberta

- *Native Studies (Professor Richard Bauman)*

  In the second term of the 1989-90 academic year, Professor Bauman was jointly responsible for preparing and conducting a two-credit course entitled "Native Rights" together with Professor Michael Asch, a member of the Department of Anthropology at the University of Alberta.

  ... the focus of the course was specifically on aboriginal land claims and the continuing quest by the First Nations in Canada for some measure of self-government.

  In studying these topics, the instructors did not confine the students simply to a survey of traditional legal materials, such as case *reports. They also looked at and discussed some of the vast literature on the historical, anthropological, and political aspects of the aboriginal claims for recognition of their existing rights under Federal and Provincial laws. They took into consideration past and current statements of government policy, as well as the particular perspectives that have been advanced by status Indians, non-status Indians, the Metis, the Inuit, and the Dene.*

- *Real Property (Professor Catherine Bell)*

  In this course, Professor Bell briefly addresses the concept of aboriginal title, as well as the aboriginal perspective on property ownership. Issues of Native land rights are referred to throughout the course to illustrate various points associated with Canadian real property law.

- *Legal History (Professor Catherine Bell)*

  In this course, a segment is devoted to concepts of Canadian property law. This is contrasted with aboriginal systems of land holding. During the past academic year, Professor Pat McCormack, an anthropologist, presented a lecture on the role of kinship and possession in land holding patterns of Cree peoples living in the Fort Chipewyan area.

- *Native Rights (Professor Catherine Bell)*

  Professor Bell is preparing to teach a course in Native law in the Fall. Professor Bell's Native Rights course will deal with several aspects of Native law, including aboriginal and Treaty Rights. In particular, she will examine concepts of Native self-government, and (in all probability) Tribal Court systems. She will also be looking at the application of Provincial and Federal laws to Native peoples, covering such matters as charges under gaming legislation. Although the course does not devote a specific section to Native offenders, it will be taking a critical look at the appropriateness of the Courts as a mechanism to decide issues that effect Native peoples. The question of racial bias will also be raised.

- *Criminology (Professor Charalee Graydon)*

  Professor Graydon teaches a general course on the law and policy of sentencing. One portion of this course deals specifically with the sentencing of Native offenders.

  Matters relating to aboriginal offenders are also discussed throughout the course in relation to principles of sentencing, the practice of sentencing, the sentencing framework, sentencing problems and avenues for sentencing reform.

- *Research Projects*

  ... Professors Bell and Graydon have been involved in research in the Native law field. Professor Bell has recently presented a paper on Metis Land Claims, and some of her work in that area will be included in a collection of readings on Native law to be published soon. Professor Graydon has also recently prepared and presented research work on female Native offenders.

  Moreover, the Centre for Constitutional Studies, which is housed at the University of Alberta Law School, is in the process of establishing a special research project on police powers. This project will be rather comprehensive, and will involve a number of researchers from a variety of different areas. Among the topics to be considered will be minority representation on police forces. Some attention will also be paid to Native issues. This includes an inquiry into Tribal police forces, police-Native relations, aboriginal justice systems, and related matters.

- *Project Description: Native Law Student Program*

  The project proposed is designed to increase Native enrolment at the University of Alberta Law School and to help ensure the success of Native law students through the creation and operation of internal and external support systems. The overall objective of the program is to increase the number of aboriginal members of the Alberta

> *Bar. We believe this objective can be achieved through the following activities:*
>
> *(a) recruitment of successful Native university graduates from Canadian universities;*
>
> *(b) promotion of the University of Alberta Law School through Native Studies Departments of Canadian Universities, Native university student associations, and existing programs for pre-law training for aboriginal students;*
>
> *(c) academic support through modification of first year courses to account for special needs and a peer tutorial program designed to provide assistance in substantive courses and to develop legal analytical skills;*
>
> *(d) assistance in obtaining financial support;*
>
> *(e) development of career support programs;*
>
> *(f) expanded course offerings and guest lectures on aboriginal legal issues;*
>
> *(g) the recruitment of a program director from the aboriginal community.*
>
> *The proposed project will operate in conjunction with existing programs of pre-law training for aboriginal applicants and the University of Alberta Native orientation program rather than duplicating these services. Members of Alberta's aboriginal community have been consulted in the development of the project and we are confident that its implementation will be received favourably.*

8. University of Calgary

> *In response to your inquiry about the extent of cross-cultural training about Native cultures that is provided in our Law School:*
>
> *We have no specific program that would meet that description. Issues of aboriginal law are encountered in various parts of our curriculum (including in a number of our natural resources law courses) and, while we do not offer an aboriginal law course on a regular basis, we have done so on an occasional basis (including during the past academic year).*
>
> *A number of our faculty members have done research in related areas, and, over the past year, our Chair of Natural Resources Law was held by Professor Richard Bartlett of the University of Saskatchewan, who gave a number of seminars and talks on aboriginal issues to the downtown bar and others. As part of one of the natural resources law courses, Prof. Bartlett taught the class in aboriginal law. It began with an examination of pre-European settlement aboriginal law, and the entire class was founded on the premise that an understanding of real law is essential to understanding the nature of Canadian law relating to aboriginal people.*
>
> *All of this is to say that while we have had a considerable interest and involvement in legal issues that pertain to Native peoples, we have not attempted to mount any cross-cultural training as such.*

Although both law faculties provide courses on Aboriginal Law, there is clearly no direct and comprehensive Aboriginal awareness training program which addresses Aboriginal cultural and spiritual values.

We note that the University of Lethbridge and the University of Alberta offer courses in Native Studies. These courses are available to law students in their undergraduate program and they may form the basis of an adequate cross-cultural education.

Organizations

The Canadian Bar Association has shown considerable interest in Aboriginal issues. The Association has published a number of reports such as "Locking up Natives," "Justice Behind the Walls," and

"Aboriginal Rights in Canada: An Agenda for Action, 1988." The Association's interest has recently evolved into the development of an Aboriginal cross-cultural training seminar. On November 2, 1990, the Native Law Subsection of the Canadian Bar Association (Alberta Branch) held the first cross-cultural training seminar for lawyers serving Aboriginal clients in Alberta. The session was held at Poundmaker's Lodge, in St. Albert, Alberta.

The program was advertised as follows:

> *Experienced panels of native elders, cultural trainers, professors and practitioners have been gathered together for a one day seminar at Poundmaker's Lodge to discuss the following practical aspects of serving native clients: - Legal and political structures of Native communities in Alberta - Socio-economic structures of Native communities in Alberta - Practical aspects of serving Native clients in criminal, family and corporate/commercial law. This seminar will be of interest to lawyers who serve Native clients in any area of practice. The emphasis will be on clarifying the often unspoken rules of conduct and realities of a Native law practice.*

The Legal Education Society of Alberta is another organization involved in the continuing education of practising lawyers. To date, the Society has not provided Aboriginal awareness training. Rather, the mandate of the Society is to provide educational up-dating on areas of interest identified by the general practising population and related to legislative and other changes.

The Indigenous Bar Association is a relatively new organization which has the potential for having an impact on Aboriginal awareness training for lawyers. Formed in 1989 for Aboriginal lawyers and Aboriginal student lawyers, it is a national Association with provincial branches. Although the Association has not sponsored Aboriginal awareness training seminars or workshops to date, it has the obvious potential to be involved in such areas.

Provincial Court

Generally, Provincial Court Judges receive no training on appointment and no formal regular in-service training in the area of Aboriginal awareness.

However, annual workshops are provided to Provincial Court Judges through the Western Judicial Education Centre – a project of the Canadian Association of Provincial Court Judges. The Centre has organized a series of three annual workshops (1989-1991) with a strong Aboriginal awareness component. The second workshop, "The Western Workshop, Alberta" was held in May 1990. The eight-day workshop devoted more than two days to "Aboriginal People and the Court". It included sessions on:

- *Sentencing of Aboriginal People*

  Objective:

  The charge of systemic discrimination against aboriginal people by the justice system will be discussed. Small group discussion will be used in a concerted effort to seek practical solutions to specific problems. Substantive cross-cultural education on Native beliefs and values will be offered.

- *Cross-Cultural Education: The Process*

  Objective:

  Aboriginal people and Judges can benefit by direct informal discussion on mutual problems experienced in the application of the law. An inhibiting factor in understanding between the individuals

> *involved is often a lack of awareness of cultural issues between the groups involved. This section will concentrate on describing how communication can be fostered and understanding improved through the aid of specially prepared video tapes. The results of a pilot project on Vancouver Island will be presented to demonstrate what is possible in any community.*

- *Sentencing Programs as Alternatives to Incarceration*

  Objective:

  This section will present practical steps that the existing justice system and aboriginal communities can take, together, to improve the justice response in dealing with Native offenders.

Court of Queen's Bench

The following information was received from the Honourable W.K. Moore, Chief Justice, Court of Queen's Bench of Alberta. He responded to a request for data including the cross-cultural and Aboriginal awareness training available to Judges of the Court of Queen's Bench:

> *Generally, from the replies I received, few Judges are aware of any on-going cross-cultural and Native awareness training programs available to Judges of the Court of Queen's Bench.*

Appeal Court

Similarly to Judges at other levels of the courts, Judges from the Appeal Court of Alberta receive no Aboriginal awareness or cross-cultural training on appointment nor on a regular basis.

The Canadian Judicial Centre

Responding to our inquiry, the Executive Director of the Canadian Judicial Centre provided the following information about cross-cultural and Aboriginal awareness training:

> *In regards to cross-cultural training we have a number of programmes under development. We also co-ordinated a programme for Provincial Court Judges last year. We are now preparing with the Department of Justice Canada a video presentation for new Judges and to be available to all Judges. We have as well a Committee on cross-cultural issue more generally, dealing with racial and other differences. I might say though that we would like to provide much more than we are but are limited by our infrastructure and our resources in expanding further into a number of areas such as the one with which you are concerned. The report of Justice Stevenson documents the problems. Nearly 40% of Judges in Canada have not had on-going training in the recent past and nearly the same number no training on appointment. It is our view that Governments be encouraged to allocate more resources to funding judicial education in Canada. I might add that we, in Canada, in the past have not kept up with other Common Law countries in allocating judicial time and financial resources to on-going training of our Judges. I would be pleased to speak further to you. The views I express are my own and should not be construed as those of our Board.*

Alberta Correctional Services

In response to a request for information from the Task Force, the Alberta Department of the Solicitor General made available the following information:

> ***Content and Frequency***
> *The Native Spiritual and Cross-Cultural Training Workshops were designed specifically to raise the awareness of staff in Correctional Services Division and the Justice System.*

The content of the workshop is "Human Awareness". It is the unique Native perspective and interpretation of the importance of respect placed on all life-giving forces of the creation. Respect for life, yourself, environment, animals, plants, and for His creation is explained during the workshop. The information in each workshop is the same but the focus is different for each group. An example would be for the Young Offender Worker, the focus would be on child rearing and discipline practise whereas for the Correction Officer staff, the focus would be on different values, behaviour and lifestyle.

To date programs have been offered from four to five times per month and vary from one day seminars to two-and-one-half-day workshops. Workshops are available at both the induction and in-service levels of training depending on where it is most efficient and most appropriate.

Target Audiences

The workshops are available to Correctional Services Division and Law Enforcement Division personnel in the following jobs:

- *Correction Officers*
- *Living Unit Officers*
- *Youth Workers*
- *Unit Officers*
- *Probation Officers/Parole Officers*
- *Court and Prisoner Security Constables*
- *Police Officers*
- *Special Constables*

Native Input into the Design and Delivery of Such Programs

The Native input to the design and delivery of the program came from:

- *Elders*
- *Presenter (background, work experience with Native Counselling Services as researcher, training officer)*
- *Discussions with Native staff as to need.*

History of Programs and Implementation Dates

In June 1989, a training study on Departmental Native Culture Initiatives was completed and forwarded to the Deputy Solicitor General outlining the need, goals, objectives, program descriptions, services, etc. ... The proposal outlined a delivery plan over the next two year period ending March 30, 1991. Program delivery commenced June 1989.

Effectiveness of Existing Programs and Proposals for Future Developments

To date; the Solicitor General Staff College has received very positive participant feedback on each course evaluation. Comments such as "very interesting and informative", "well prepared", "educational", etc., have been received.

The instructor continually incorporates recommendations into the presentations. Courses are scheduled to March 1991.

The Correctional Service of Canada

Upon request, the Correctional Service of Canada, Prairie Region, provided detailed program information on cross-cultural training. A selection of the data provided follows:

Cross-Cultural Training Programs - Overview

Although a number of initiatives were in place prior to 1984/85, it was in this fiscal year that Native-specific cross-cultural awareness programs became a standardized scheduled training event available to all staff.

Programs utilized by CSC has been developed and delivered by Native Counselling Services of Alberta, Native Clan of Manitoba, and CSC Staff.

In 1987/88 CSC assumed major responsibility for program delivery and redesign. A Native employee was seconded to the training division and a needs analysis was conducted to review the program and determine its level of effectiveness. The analysis found that although the program satisfied basic entry level requirements a program specific to CSC was required for those staff members who had continuing contact with Native offenders. The program entitled

"Planning in Four Directions" was developed and the first course offered in 1989/90.

The Prairie Region is considered a leader in Native awareness training programs and has been selected to develop programs for delivery on a National basis.

Frequency of Program and Financial Expenditures

***1987/88** FY Program Title - "Native Awareness" - Duration 3 days*

- *15 courses delivered - 241 participants*
- *Program Delivery (contract) $12,950.00*
- *Staff Inter-Change Salary (Native Counselling Services of Alberta) $30,179.00*

Total $43,129.00

***1988/89** FY Program Title - "Native Awareness" - Duration 3 days*

- *14 courses delivered - 197 participants*
- *Program Delivery (contract) $12,950.00*

***1989/90** FY Program Title - "Native Awareness" - Duration 3 days*

- *10 courses delivered - 105 participants*
- *Program Delivery (contract) $ 5,200.00*

***Program Title** - Planning in Four Directions"*

- *Duration 3 days*
- *1 course delivered (pilot) - 13 participants*
- *Programs delivered 1984/85 - 1989/90 = 65*
- *Participants trained*
- *Program delivery cost including interchange = TOTAL $114,279.00*

Induction Training = Recruits receive 0.5 days of introductory

Native awareness training: commencing April, 1986 = 319 trained.

Program Content and Target Audiences

Program: NATIVE AWARENESS

***Purpose:** The purpose of this course is to introduce and ensure that all staff who are in contact with Native inmates receive Native Awareness training to assist them in the care and treatment of Native inmates.*

Course Outline: Module I

A. General History Canadian Indians
B. Attitudes

Module II

A. Values of the Indians of Canada
B. Native Spirituality

Module III

A. Traditional Native Ethics Rule of Behaviour "Native Family"
B. Political and Social Status of Native People in Canada

Target Group: All CSC employees

Course Duration: 3 days, this course is designed for presentation in 3 one-day sessions if necessary, however, it is necessary that participants receive the modules in sequence.

Resource: Contract

Class Complement: 20 participants

Program: PLANNING IN FOUR DIRECTIONS

Purpose: The purpose of this course is to assist staff to effectively interact with aboriginal offenders. Throughout the course, case files are utilized to familiarize participants with aboriginal offenders, their life styles, positive and negative influences, appropriate resources and programs, communication alternatives.

Course Outlines:

- *Aboriginal People*
- *Tribes in the Prairie Region*
- *Aboriginal Identity*
- *Negative Impact of Alcoholism*
- *Significance of Ceremonies/Practices of Native Spirituality*
- *Appropriate Planning and Programming*
- *Communication with Aboriginal Offenders*

Course Themes:

- *If you don't know where you're going, any path will do.*
- *(Lack of a sense of identity)*
- *Embrace your culture.*
- *Developing freedom through appropriate planning and programming.*

Target Group: All employees who interact with aboriginal offenders on an on-going basis.

Resource: Regional Correctional Staff College

Duration: 3 days

Class Complement: 10 - 16 participants

Number of Programs and Participants

	Programs	*Participants*
1984/85 Cross-Cultural Awareness	*6*	*72*
1985/86 Native Awareness	*7*	*114*
1986/87 Native Awareness	*12*	*192*
1987/88 Native Awareness	*15*	*241*
1988/89 Native Awareness	*14*	*197*
1989/90 Native Awareness	*10*	*105*
Native Human Justice	*1*	*11*
Planning in Four Directions	*1*	*13*

Summary of Cross-Cultural Training

It should be noted that the Task Force has not had an opportunity to participate in and evaluate the majority of the cross-cultural and Aboriginal awareness training programs offered by the different components of the criminal justice system. As a consequence, our analysis in this section of the Report is based on written and verbal information provided to the Task Force.

Based on the information detailed above and on the summary information in Table 4, we conclude that both the federal and the provincial correctional services have made considerable progress in establishing Aboriginal-specific cross-cultural training. Correctional Services Canada seems most advanced in this respect. The Alberta initiative, started in June 1989 and scheduled for completion in March 1991, is much more recent.

The almost complete lack of cross-cultural training initiatives, specifically Aboriginal awareness training initiatives, stands out as a noticeable and alarming characteristic of the criminal justice system, and holds true for all service providers working in the courts area of the criminal justice system. Perhaps the reason for this situation can be stated most simply by quoting from the response provided by the Alberta Department of the Attorney General:

TABLE 4

SUMMARY OF CROSS-CULTURAL TRAINING

Element of the Criminal Justice System	Native Cross-Cultural Training		
	Induction	Regular In-Service	Ad-Hoc
Prosecutors	None	None	Yes
Justices of the Peace	None	None	Yes
Legal Aid Personnel	None	None	Yes
Lawyers (Students)	Exposure to Native Law, History and issues throughout various courses, but no specific cross-cultural training as such.		
(Practising)	None	None	Yes
Judiciary (Provincial)	None	None	Yes
(Queen's)	None	None	Yes
(Appeal)	None	None	Yes
Corrections (Alberta)	Yes (1 to 2 1/2 day workshops) 4 - 5 times per month	Yes (1 to 2 1/2 day workshops) 4 - 5 times per month	Yes
	[Program delivery scheduled to end March 30, 1991.]		
(Canada)	Yes (1/2 day)	Yes - Native Awareness (3 day course, offered 10 times in 1989/90) Native Human Justice (offered once in 1989/90) Planning in Four Directions (3 day program offered once in 1989/90)	Yes

> *It has never been suggested that in order for the process to be fair, the Prosecutor (or the Judge or the defence lawyer for that matter) should receive formal training in any particular ethnic culture. The Criminal Justice System is not ethnocentric in its operation. Rather, it focuses its decisions on the material evidence and only on the evidence brought forward and admitted by the Judge.*

The Position of the Task Force on the Need for Cross-Cultural Training

The Task Force takes several positions:

A. Any system that has a significant Aboriginal client group must be culturally sensitive to the needs of that group and be capable of monitoring its response to that group. This includes the criminal justice system.

B. The current Criminal Justice System is an ethnocentric system which has been developed from the English common law system. It is generally not sensitive to the different world view and cultural practices of Aboriginal people.

C. Aboriginal awareness training is an on-going requirement for all components of the criminal justice system. Such training should be extensive and interactional. It should be provided by Aboriginal people. Generalized cross(multi)-cultural training is not adequate to address the needs of Aboriginal people.

D. Aboriginal awareness training programs and the increased recruitment of Aboriginal staff are complementary measures and essential components of an integrated approach needed to sensitize the criminal justice system to Aboriginal cultural and spiritual needs. These measures reduce the likelihood of systemic discrimination occurring in that system.

The Task Force Recommends:

8.19 That the Attorney General's Department prepare a policy statement on Aboriginal awareness training specifically recognizing the need for extensive Aboriginal awareness training for all personnel including: Crown Prosecutors, Justices of the Peace and the Judiciary.

8.20 That induction and regular Aboriginal awareness training be provided to all Alberta Government personnel working in the criminal justice system.

8.21 That the Government of Alberta investigate the feasibility of establishing a comprehensive and effective Aboriginal awareness training program for provincial government employees. The development of any centralized training program should include extensive consultation between the Aboriginal community, educational facilities, and service agencies.

8.22 That all Aboriginal awareness training programs be comprehensive and interactional in format, be delivered by Aboriginal people, and contain a component which is offered on an Indian Reserve or Metis Settlement.

8.23 That Judges at all levels of Court receive Aboriginal awareness training on appointment, and that all Judges who deal with Aboriginal people receive additional Aboriginal awareness training.

8.24 That all Aboriginal awareness training programs recognize and address the distinctiveness of Indian people and Metis people.

8.5 Aboriginal People Employed in the Criminal Justice System in Alberta

Term of Reference:

Additional Considerations 8(e)

to determine to what extent Indian and Metis people are presently employed in the various components of the Criminal Justice System in Alberta and to propose policy changes that would result in a higher level of employment.

The Number of Aboriginal People Currently Employed in the Criminal Justice System in Alberta

Table 5 shows that between 0 - 4.5% of employees in the different components of the criminal justice system are of Aboriginal ancestry. The total for the whole criminal justice system is about 2%. It should be noted that the data are based on self-reported ethnic status and that the figures represent the Aboriginal employment situation at November 1990. Nevertheless, the statistics are indicative of the current level of employment of Aboriginal people in the criminal justice system.

While Aboriginal people account for approximately 2% of employees in the criminal justice system, they represent 4 - 5% of the total population in Alberta.[24] In total, they represent between 20 - 35%[25] of the client base served by the various components of the criminal justice system. In some areas of the system, Aboriginal representation is much higher than is indicated by the overall range. For example, 48.6% of sentenced female admissions concerned Aboriginal women.

Based on these statistics alone, it is clear that Aboriginal people are under-represented as employees of the criminal justice system.

A closer look at Table 5 reveals some interesting points:

- The provincial and federal correctional services employed a higher proportion of Aboriginal people than did the other components of the criminal justice system.

TABLE FIVE

THE EMPLOYMENT OF ABORIGINAL PEOPLE IN THE CRIMINAL JUSTICE SYSTEM IN ALBERTA, 1990

Ethnic Status of Employees / Criminal Justice System Comp.	Total Number of Employees	Number of Aboriginal Employees	Aboriginal Employees as a % of Total Employees
Police[a]			
•R.C.M.P.	2, 052	50 - 55	2.4 - 2.7%
•Municipal Police	2,583	27	1.0%
•All Police	4,635	77 - 82	1.7 - 1.8%
Alberta Solicitor General[b]			
•Corrections	2,000	54[c]	2.7%
Correctional Service of Canada			
•Prairie Region	2,071[d]	93	4.5%
•Alberta	894	31	3.5%
National Parole Board		6	
Alberta Attorney General			
•Crown Prosecutors	125	Not Known	
•Justices of the Peace	398	4	1.0%
Provincial Court Judges	111[e]	0	0%
Court of Queens's Bench Judges	64	0	0%
Appeal Judges	8[f]	0	0%
Legal Aid Lawyers Roster	2,647[g]	28[h]	0.9%

[a] See Section on Police for details of data concerning police.

[b] Includes salaried staff in Corrections and Law Enforcement.

[c] Does not include thirty-seven non-salaried Aboriginal staff wage positions, for example, in the Summer Temporary Employment Program.

[d] Number of employees.

[e] Excludes two supernumerary and one vacant position.

[f] Excludes one vacant position.

[g] From an alphabetical listing of lawyers willing to accept Legal Aid cases, provided by Legal Aid Society. Ethnic status was not defined.

[h] The number of members of the Indigenous Bar Association has been used as an indicator of the potential number of Aboriginal lawyers. However, not all members of the Indigenous Bar Association provide Legal Aid services. Therefore, the percentage of Legal Aid lawyers of Aboriginal ancestry is very likely to be lower than 0.9%.

- The R.C.M.P. employed a higher proportion of Aboriginal people than did municipal police forces.

- The court system, including Prosecutors, Justices of Peace, Judges, and Legal Aid lawyers recorded the lowest proportion of Aboriginal employees.

- There are no Aboriginal Judges in Alberta.

- Two services with affirmative action programs - the R.C.M.P. and Correctional Service of Canada - recorded a higher proportion of Aboriginal employees than did their provincial and municipal counterparts which do not have affirmative action programs.

Government Policies on the Hiring of Aboriginal People

As has been stated elsewhere in this Report, the hiring practices of the federal components of the criminal justice system in Alberta and in Canada in general are controlled by written affirmative action policies. An example of such a policy is the Directive on Affirmative Action, issued by the Commissioner of the Correctional Services of Canada:

> *POLICY OBJECTIVE*
>
> 1. *To increase the representation and participation of women, disabled persons, Indigenous people and visible minority persons in the Service to a level comparable to their availability in the Canadian labour force in general.*
>
> *REQUIREMENT*
>
> 2. *Treasury Board policy requires that the Service ensure that systemic discrimination is eliminated by all means available. Systemic discrimination is discrimination which is built into personnel processes with the result that certain groups of people are adversely affected by practices and systems which have been applied equally with no conscious intent to discriminate (e.g., height standards).*
>
> *RESPONSIBILITIES*
>
> 3. *All managers shall ensure that the objectives of the Affirmative Action Program are considered in planning organizational change.*
>
> 4. *Deputy Commissioners of regions and National Headquarters Branch Heads are responsible for ensuring that the objectives of the action plans established for their organizations are met.*
>
> 5. *All Responsibility Centre Heads are accountable for the achievement of the agreed targets.*
>
> *REPORTS*
>
> 6. *Deputy Commissioners of regions and National Headquarters Branch Heads shall provide quarterly progress reports to the National Headquarters Unit responsible for Affirmative Action.*
>
> *COMMUNICATION*
>
> 7. *National Headquarters and Regional Headquarters shall ensure that all relevant information regarding the Affirmative Action Program is available to all staff members.*

The data in Table 5 indicate that affirmative action policies, together with stated targets, can and do have the effect of increasing Aboriginal employment. For example, at the time of writing, the

R.C.M.P. in Alberta had just announced the implementation of a policy that would see only the hiring of minority groups until their representation in the workforce had increased to acceptable levels. The R.C.M.P. had also distributed a new policy outlining their "Aboriginal Hiring Program."

These affirmative action practices are contrasted with the policies of the provincial government with respect to the hiring of Aboriginal people. The Government of Alberta does not have an explicit affirmative action program. Its policy is contained in Section X of the Alberta Government Recruitment and Selection Manual. This Section addresses "Related Recruitment and Selection Issues:"

> ***Career Development for Women and Natives***
>
> *The Personnel Planning and Career Development Branch of the Staff Development and Occupational Health Division, P.A.O. was established to ensure that all women and Natives have equal employment and career opportunities within the Alberta Public Service.*
>
> *The Women's Program reflects the Government of Alberta's priority commitment to providing measures to assist female employees in achieving their career potential in the Public Service. The program is designed to advance women's awareness of and access to development opportunities. In addition to helping managers meet their responsibility for utilizing all human resources, there is also the objective of helping both men and women understand and adapt to changing roles in the workplace.*
>
> *The objectives for Native employment are similar, with greater emphasis upon assisting Native people in applying for employment in the Public Service.*
>
> *In both programs the emphasis is upon helping the target groups to achieve their potential, rather than on forced or affirmative action. An awareness of and sensitivity to the special problems of these groups is an important part of the professional development of all staffing officers.*

The Task Force is not aware of any targets or deadlines established by the provincial government for Aboriginals in accordance with this policy. The data available would indicate that the provincial government's more permissive approach to Aboriginal employment has not been effective in recruiting Aboriginal employees.

Underlying Issues

Before we can develop recommendations, certain questions must be answered:

- Is there a need for employment of more Aboriginal people in the criminal justice system?
- Is this a long-standing need?
- If there is a need for increased Aboriginal employment, why have government departments not reacted in a manner which would achieve greater success?
- What are the problems involved in the recruitment of Aboriginal people? In Canada and Alberta, new attitudes are slowly developing.

These "new attitudes" include:

- a gradual recognition of the cultural and spiritual differences between Aboriginal and non-Aboriginal people
- acceptance of the need to ensure equality of treatment

- awareness of the need for prevention of systemic discrimination against Aboriginal people in the social, educational and criminal justice service delivery systems.

Cross-cultural training leads (and indeed has led) the non-Aboriginal workforce to increased awareness and understanding of Aboriginal values. However, such training must be complemented by the increased involvement of Aboriginal people and their employment in the systems.

Aboriginal communities, organizations and service delivery agencies have repeatedly stressed the need for a more culturally and spiritually sensitive criminal justice system. Such exhortations, together with the alarming but readily accepted fact that between 20 - 30% of the activity of the criminal justice system concerns Aboriginal people, demands that the criminal justice system be more responsive to the needs of Aboriginal people.

The 1975 National Conference on Aboriginal Peoples and the Criminal Justice System addressed Aboriginal culture, value system, philosophy, religion and perspective on life. The conference recognized that

> *priority should be given to having Native persons take part in the administration, control and direction of such things as policing, probation parole, the Courts, Native Counselling, Child Welfare and Juvenile Family Courts. It called for official recognition of fully qualified professional Native persons and call for a Native Recruitment program to serve the Criminal Justice System.*

In his introduction to his 1978 Report on "Native People in the Administration of Justice in the Provincial Courts of Alberta," The Honourable Mr. Kirby stated that:

> *The recommendations are intended to bring about more sensitive recognition in the Provincial Justice System of the culture, customs and language of Native people.*

The Indian Association of Alberta and the Metis Association of Alberta both state the Aboriginal people's goal of re-establishing an Aboriginal justice system in their briefs to the Task Force. However, these organizations recognized that while work toward this goal was in progress, certain immediate improvements could be made in the existing system.

The Indian Association of Alberta proposed a flexible policy for the criminal justice system and outlined a framework with a range of alternative structures. The Association believed this framework could be responsive to the needs of all First Nations while progressing toward an Aboriginal justice system. Alternative "B" in that framework referred to:

> *Adjustments to the Criminal Justice System by the involvement of Indian elements in the system without any fundamental change in control.*

The report continued by stating:

> *Even though the Criminal Justice System is controlled by the Federal and Provincial Governments, adaptations and changes can be made to be more responsive to the particular needs and circumstances of First Nations and their members....These adjustments do not involve any change in the essential control of the Criminal Justice System but rather in the sensitizing of the Criminal Justice System to the differing needs of First Nation members*

The 1990 report of the Metis Association of Alberta contained numerous recommendations. Two of these serve to illustrate the position of the Metis people on the suitability of the existing system, bearing in mind one of the goals of the Association, that of an Aboriginal Justice System:

> *Recommendation No. 6:*
> *That the Government of Canada and the Province of Alberta develop long-term policies for indigenization of the Criminal Justice System and a consultative framework policy be developed to ensure equitable participation by the Metis Nation.*
>
> *Recommendation No. 15:*
> *That the Province of Alberta establish an Affirmative Action Program to specifically recruit Metis for service within the Criminal Justice System. The Province of Alberta should set a 10% minimum participation within guidelines for Government Services.*

Clearly, the concerns identified in the reports of the mid- 1970's are echoed in the reports of the 1990's. This would indicate that the policies of the 1970's and 1980's have not been capable of dealing with these problems successfully.

The above arguments show that there is still an obvious need for the increased participation and employment of Aboriginal people in the criminal justice system. Certain observations must be made about the apparent lack of success in responding to such needs.

It would be unfair to treat all components of the criminal justice system in the same manner as it is apparent that some sections have recognized the need to employ more Aboriginal people and have made attempts to meet that need. The R.C.M.P. and the Correctional Services of Canada, most noticeably, fall in this category. Much more recently, at the provincial and municipal levels of government, the Alberta departments such as the Solicitor General and larger municipal police forces have also begun to respond to the need to recruit Aboriginals. The Alberta Department of the Attorney General and the Judiciary are the most obvious examples of components which have not made an effort. Nevertheless – though we recognize the efforts made to date, the current situation is still not acceptable.

The benefits of hiring Aboriginal people out-weigh the financial or bureaucratic difficulties that arise. For example, spiritual and cultural sensitivity and equality of treatment cannot fail to produce positive results.

The Task Force contends that the current situation demands a more positive and imaginative approach. Such an approach to the recruitment and employment of Aboriginal people in the criminal justice system is needed to ensure the equality of treatment of Aboriginal people in that system.

There are several significant problems associated with the recruitment of Aboriginal people for employment in the Criminal Justice System. The most serious problem concerns the participation of Aboriginal people in the recruitment initiative. If Aboriginal people are not involved in the development of recruitment initiatives and are not fully informed of such initiatives, they may simply choose not to participate. As a result, the whole purpose of those initiatives would be undermined. It is imperative that the Aboriginal community be closely involved in the development and implementation of Aboriginal recruitment initiatives.

Another problem affecting the hiring of Aboriginal people is the absence of effective and appropriate hiring techniques. Due to the low numbers of

Aboriginal people employed in the criminal justice system, many components of the system are inexperienced in and ill-equipped to undertake the recruitment of Aboriginal people. Effective and appropriate hiring techniques must be developed if meaningful recruitment of Aboriginal employees is to be achieved. This is particularly true at the provincial and municipal levels.

The various levels of government must be more innovative and flexible in their approaches to the development of recruitment initiatives. In addition to being culturally responsive, recruitment initiatives should include elements such as initiation or induction programs for Aboriginal employees. Where necessary, pre-application training programs and cluster or group hiring should be included.

Aboriginal recruitment initiatives should not be focused on entry level positions only. They should include management, supervisory, professional and administrative positions. To develop recruitment initiatives for a variety of positions within the criminal justice system, government departments should recognize that educational requirements are often a serious barrier to increasing Aboriginal employment. Most educational requirements reflect "white society" standards. Many Aboriginal people are unable to meet such culturally insensitive standards. Departments must pay close attention to the reasons for hiring Aboriginal people and to what they wish to achieve through such hiring practices. Accordingly, they should be willing to accept skills, experience and abilities equivalent to formal educational qualifications.

Recruitment initiatives are an important element in any strategy for increasing the number of Aboriginal employees in the criminal justice system. The retention of Aboriginal employees within the system once they have been recruited is equally important. The rate of turn-over for Aboriginal employees is high. It is necessary to develop initiatives to counter this trend.

Aboriginal people are often discouraged from trying to bring their Aboriginal culture into the workplace. Employers and managers have a divided view of the purpose of employing Aboriginal employees. Some managers simply view the employment of Aboriginal people as meeting an affirmative action requirement. Others hold a more positive view. They see Aboriginal employment as a means of ensuring that the system is sensitive to Aboriginal spiritual and cultural values. They also recognize Aboriginal employment as a means of providing positive role models for the Aboriginal community and improving the relationship between the system and Aboriginal offenders or clients. Some managers view the hiring of Aboriginal people with outright scepticism. Management must educate itself on the potential roles of Aboriginal employees and transmit the benefits of Aboriginal recruitment to both non- Aboriginal staff and union bodies. Such education is necessary to provide an environment that is conducive to retaining the services of Aboriginal employees.

Discrimination constitutes another barrier to the retention of Aboriginal employees. Sometimes, this involves direct discrimination against Aboriginal people. In other cases, a perception of discrimination exists as a reaction to different hiring techniques used to recruit Aboriginal people. Regardless of the reason, management has the responsibility to ensure actively that discriminatory behaviour does not persist and that discriminatory attitudes do not have a negative impact on the environment in which Aboriginal people work.

In addition to establishing an overall working environment that is receptive to Aboriginal employees, other support mechanisms should be developed to contribute to the retention of Aboriginal employees. Such mechanisms include:

- support groups for Aboriginal employees;
- resource individuals for Aboriginal employees;
- mechanisms for dialogue with management; and,
- a process for dealing with complaints.

One final barrier to successful recruitment and retention of Aboriginal employees is the lack of professional advancement opportunities for these employees. Management must ensure that meaningful opportunities exist for the career advancement of Aboriginal employees. To achieve this, organizations must address the need for training programs to enhance advancement opportunities. Opportunities must be made available for Aboriginal employees to occupy more senior positions on a trial or acting basis.

Clearly, any initiative with respect to Aboriginal recruitment demands the adoption of a comprehensive approach, including the development of integrated support structures. If more Aboriginal people are to be employed in the criminal justice system in order for that system to be sensitive to the spiritual and cultural needs of Aboriginal offenders, then the same sensitivity must be shown to Aboriginal people employed in that system.

Basis for Recommendations

The Canadian Human Rights Commission in its 1989 Annual Report commented on the employment of Aboriginal people in its 1989 Annual Report:

> *Improvements in the representation of Native people in the workforce covered by the Employment Equity Act is excruciatingly slow. Between 1987 and 1988 reported representation increased only 0.07 percent, from 0.66 percent to 0.73 percent. At this rate of increase, it will take another 20 years before Aboriginal employment reaches even 2.1 percent, the current level of their availability in the workforce.*

"Affirmative Action" has been defined as:

> *Steps and programs that are designed to eliminate existing and continuing discrimination, to remedy the lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination.*[26]

Our recommendations are based on this definition and are intended to increase the number of Aboriginal people employed in the criminal justice system.

The Task Force Recommends:

8.25 That Section X of the Alberta Government Recruitment and Selection Manual be amended to create an affirmative action or preferential hiring policy for Aboriginal people. In addition, the "Personnel Policies and Procedures Manual" should be updated to reflect the substance of the affirmative action policy.

8.26 That Aboriginal people be consulted in the process of the development of an affirmative action policy. Such consultation

serves to ensure that the policy is developed in partnership, that Aboriginal people understand and support the policy, and, most importantly, that they will participate in any resulting program.

8.27 That affirmative action policy include defined targets for Aboriginal employment and established deadlines to reach these targets.

8.28 That the Personnel Administration Office of the Government of Alberta, in conjunction with the office recommended under this report, be responsible for developing affirmative action policy and for monitoring the compliance of government departments with that.

8.29 That departments which develop Aboriginal recruitment initiatives include in these initiatives:

(i) more culturally sensitive and appropriate recruitment techniques;

(ii) cluster or group hiring strategies, where appropriate;

(iii) recognition and use of existing Aboriginal organizations to assist in recruitment;

(iv) pre-application training programs, where appropriate;

(v) a more imaginative and flexible approach in assessing the qualities, experience, and skills of Aboriginal people as alternatives to formal educational qualifications.

8.30 That recruitment initiatives be developed to hire Aboriginal people into management, supervisory, professional, and administrative positions as well as entry level positions.

8.31 That when Aboriginal staff have been recruited, government departments ensure that substantial support mechanisms are in place. Support mechanisms should include:

(i) support groups for Aboriginal employees;

(ii) resource individual(s) for Aboriginal employees;

(iii) Aboriginal-specific induction training;

(iv) a specific formal process for dealing with complaints from Aboriginal employees;

(v) making Aboriginal Elders available for support to Aboriginal staff.

8.32 That executive managers of government departments create a receptive work environment for Aboriginal employees. Activities

which can contribute to a positive work environment for Aboriginal people include:

(i) ensuring that all levels of management are educated and informed about the objectives of affirmative action initiatives and about the potential roles for Aboriginal employees;

(ii) ensuring that management maintain liaison with unions and non-Aboriginal employees to educate them about the objectives of Aboriginal employment programs;

(iii) ensuring that a mechanism exists for management and supervisory staff to enter into a dialogue with Aboriginal staff;

(iv) encouraging Aboriginal people to express their culture;

(v) establishing a firm position on discouraging and penalizing, at any level in the organization, actions or expressions of a discriminatory or racist nature.

8.33 That promotional opportunities for Aboriginal employees be addressed, including:

(i) the development of training programs for promotional opportunities;

(ii) the placement of Aboriginal employees for trial periods in promotional situations;

8.34 That none of the foregoing recommendations be used in any way to impede initiatives undertaken by Aboriginal communities and government departments aimed at giving Aboriginal people greater involvement in and control of the various components of the criminal justice system.

8.6 Women and Youth

Term of Reference:

Additional Considerations 8(f)

to identify areas of concern as they relate to the special needs of Indian and Metis youth and women as they are affected by the areas under review.

Although Aboriginal youth and Aboriginal Women have several needs in common, they also have different needs. Therefore, women and youth will be discussed separately.

Women

> *The strength of the Indian Nation is in the women. No matter how straight your arrows, no matter how brave your warriors, no Nation is defeated until the hearts of the women are on the ground.*
>
> *- Dr. Connie Uri*[27]

The Task Force contacted most Indian and Metis women's organization in Alberta to request submissions. Although the only Indian or Metis submission we received came from the Dene Tha' Women's Society of Assumption, the Metis Association of Alberta commented on women, and the Elizabeth Fry Societies in Calgary and Edmonton made several excellent suggestions with respect to women. We obtained most of our information from the extensive report "Creating Choices".[28] The merit of "Creating Choices" has been recognized and accepted by the Government of Canada. There are indications that many of the recommendations are being implemented, and that others will be implemented. We met Aboriginal women when we visited provincial correction centres. Several Aboriginal women were present in our meetings with the Native Brotherhoods.

The Task Force invited eight Aboriginal women to attend a one-day meeting in Edmonton. They came from various reserves, settlements, and Indian and Metis organizations.

General

The incarceration rate for female Aboriginal offenders is considerably higher than it is for men. During 1989, 46.6% of the 3,469 female offenders admitted to adult provincial correctional centres were Aboriginal women.

With respect to the average daily population in adult provincial correctional centres, 37% of the female sentenced offenders were Aboriginals, compared to 30% of male sentenced offenders. Aboriginal women represented 50% of the female remand population, compared to 29.9% for men. Aboriginal female young offenders admitted in 1989 composed 41.6% of admissions. During 1989/90, the daily average of female young offenders incarcerated in Alberta Young Offender facilities was 34, of whom 44.1% were Aboriginal female young offenders.

To identify areas of concern related to the special needs of Aboriginal women, we must consider a comparison of types of incidents involving Aboriginal female and male offenders.

- women were the victims of female assailants in 78% of the cases, while men victimized women in 35% of the cases;
- the age distribution of offenders was similar for both sexes;
- female assailants were more likely to be an acquaintance (50%) or relative (15%) of their victim than were men (25% and 5% respectively);
- weapons were used by 23% of female assailants and 34% of male assailants; 64% of the victims of women were injured in the incident, compared to 48% of victims of men, and 59% of victims of both sexes together;
- an incident was most likely to be reported to the police if it involved men and women acting in a group (58%), or if it involved one or more men (35%), or one or more women (31%). If the attacker was a woman acting alone, only 29% of the incidents were reported;
- respondents were more likely to describe the incident as a threat or attempt rather than as a completed crime if the perpetrator was a man (49%) rather than a woman (32%).[29]

Women commit about 10% of all serious crimes in Canada.[30]

The special needs of women in contact with the criminal justice system may originate from the social and economic conditions faced by Aboriginals. Poverty, remoteness, unemployment, inadequate housing, inadequate health care facilities, inadequate education, different cultural and traditional values, the male-dominated criminal justice system, and a general lack of opportunity to advance in life are all factors leading to women's special needs with respect to the criminal justice system.

In its oral presentation, the Elizabeth Fry Society of Calgary graphically described Aboriginal women as suffering from a "triple whammy": they are Indian or Metis, they are women, and they are prisoners.

The Elizabeth Fry Society of Edmonton stated in its Brief:

> *It is a shocking fact that over 90% of Native women in prison have been physically and/or sexually abused. We cannot help but feel such women will continue to be in conflict with society until these problems are resolved....Although most of our clients have experienced abuse in their lives, the extent of the abuse is greater with our Native clients. Ninety percent have been physically abused compared to 61% non-Native and 61% have been sexually abused compared to 50% non-Native.*[31]

A footnote in the Brief stated:

> *Our experience would indicate that the 90% estimate may be low. Every single one of their clients that their counsellors assessed, is a victim of incest.*[32]

A study, conducted by the Ontario Native Women's Association, of Aboriginal women from reserves, or urban, or rural areas, found that 80% of the women had experienced family violence.[33] The incidence of family violence in society as a whole has been placed at 10%.

A study of Metis families conducted in the Edmonton Area[34] found that 70% of the respondents had been physically abused during their lives, 87% had been emotionally abused, and 39% had been sexually abused.

In an article entitled "Breaking Chains," First Nations women describe how violence against women results in contact with the Criminal Justice System:

> *The violence of which we are the victims, and of which our stories tell, is not occasional or temporary. Most of us have experienced sustained abuse extending through much of our lives. Indeed, our stories have much in common with what the criminal statistics on violence say. The violence we have experienced has typically been violence at the hands of men.*
>
> *There is no accidental relationship between our convictions for violent offences and our histories as victims. As victims, we carry the burden of memories: of pain inflicted on us, of violence done before our eyes to those we love, of rape, of sexual assault, of beatings, of death. For us, violence has begotten violence: our contained hatred and rage has been concentrated in a explosion that has left us with more memories to scar and mark us.*[35]

At the insistence of certain community groups, the criminal justice system has responded to family violence by fettering the discretion of police and prosecutors, in the laying and prosecution of charges.

We have been told by Aboriginals that, if a criminal charge were to be laid for every incident of family violence, the traditional Aboriginal conciliation and healing methods would be frustrated. We have been given examples of one of the participants, usually the man, requiring psychological or alcohol treatment. The facing of a criminal charge does not encourage the seeking of such treatment. A culturally more appropriate response could be more effective.

LaPrairie identifies women as being among the most severely disadvantaged of all groups in Canadian society. She states:

> *This disadvantaged position is explained in part by the fact that Native women were discriminated against in legislation until 1985, namely The Indian Act, section 12(1)(b), which determined their rights and legal status according to standards which discriminated on the basis of sex.*[36]

We have described the role of women in traditional Aboriginal society and the demise of traditional economies and male roles in Section 8(a) of this Report.

Indian and Metis women are subject to the same biases and discrimination which are suffered by Indian and Metis men.

Police

Aboriginal women are reluctant complainants. They will suffer a great deal of abuse before they complain. The Dene Tha' Women's Society stated in their Brief that a woman will probably be abused 38 times and leave her male partner 35 times before complaining to the police.

Aboriginal women are generally shy, soft-spoken, non-confrontational and non-aggressive. They do not assert their rights when dealing with the police in the first instance. Most police are male, and Aboriginal women are reluctant to give details of a sexual nature to anyone, particularly to a man.

Legal Aid

Most Aboriginals appearing in Court receive Legal Aid. The usual eligibility requirements include factors such as financial need, prior record and seriousness of the offence. Faced with the allocation of diminishing resources, those at risk of being imprisoned are most likely to be considered eligible. Statistics seem to show that female offenders are less likely to be incarcerated - whether because they commit less serious offences, because of the fact that there are fewer prisons for women in Canada, or because of chivalry. Therefore, they are less likely to be considered eligible for Legal Aid.[37] We have made no observations and have no data from Alberta to support this statement.

Aboriginal women have a special need for culturally sensitive and preferably Aboriginal female legal assistance. This is especially so in cases involving sexual matters, because Aboriginal women refuse, or at the best are reluctant, to discuss matters of a sexual nature. In fact, they are reluctant to discuss matters in general and the sexual nature of some cases further compounds the problem.

Courts

During interviews, Aboriginal women provided anecdotal information which suggests that they are more uncomfortable in a formal Court setting than Aboriginal men. If they are the accused, they are usually represented by a non-Aboriginal male lawyer. We have been told by Aboriginal women that they have difficulty giving instructions to male non-Aboriginals. As a result, defence counsel is not able to prepare and present a full answer in defence to the charges.

Aboriginal women are frequently ineffective witnesses. They are overly deferential to authority and when giving evidence, they frequently say whatever the Court, Crown or defence counsel wants them to say.

Aboriginal women who live in rural areas have difficulty attending Court. If they are mothers, child care presents a problem. If Court attendance is required because of family violence, the man and woman are usually separated which means that the woman has no means of transportation. Aside from these problems, Aboriginal women face the same problems with respect to attending Court as experienced by Aboriginal men.

Corrections

In April of 1990, "Creating Choices," the report of the Task Force on Federally Sentenced Women, was released by Correctional Services Canada. Our information about women comes mainly from this source, from briefs from the Elizabeth Fry Societies of Calgary and Edmonton, and from our literature review. Areas of concern relating to the special needs of Aboriginal women identified by the Task Force on Federally Sentenced Women included the following:

- correctional institutions are frequently located a considerable distance away from Aboriginal communities and the prisoner's family. This causes the removal of prisoners from their Aboriginal culture and community and a disruption of family life.
- women are usually over-classified as security risks. There is a lack of significant opportunity for movement within the range of institutional and community facilities and programs available.
- there is a lack of sufficient programs and services that respond to the unique needs of Aboriginal women.
- the needs of female long-term offenders may not be met due to programming inequities caused by placement in provincial institutions.
- there is ineffective pre-release planning. The women lose contact with their community, traditions and culture. Two-thirds of those interviewed by the Task Force have children. Fifty-nine percent engage or have engaged in self-injurious behaviour. Aboriginal women are uncomfortable with non-Aboriginal staff, particularly with respect to mental health, sexual abuse, and substance abuse.
- Aboriginal women need more culturally appropriate programs in institutions.
- community options for women released from federal or provincial custody are scarce.
- there is a need for more community residences which are sensitive to Aboriginal women.
- Aboriginal women do not receive respect and support. They do not have an opportunity to take responsibility for their own lives.
- there is a need for successful program directions which focus on self-awareness, self-esteem, promotion of community involvement, and inter-agency co-ordination. Services should be delivered holistically; tools

which work for women should be used and supportive environments should be provided with less emphasis on traditional security measures.

- there is a need to introduce Aboriginal women to their own culture and spirituality, and to make Indian and Metis spirituality, customs, and traditions part of the jail experience. There should be a program of Aboriginal studies. The involvement of Elders should be increased, particularly of women Elders who should have the same status in a correctional centre as the other chaplains.
- it is essential for women to have family visits and visits with children, especially small children.
- there is a need for a better community release strategy.
- programs for Aboriginal women should concentrate on issues associated with health, and on recovery from sexual, physical, and emotional abuse.
- provision must be made for Aboriginal women for the development of a personal plan for their release.
- arrangements must be made for community support for Aboriginal women when they are released.
- community release centres, half-way houses, and Aboriginal centres must be established to ease the re-entry of Aboriginal women into society.

The Elizabeth Fry Society of Calgary suggested that Indian and Metis women in correctional institutions be permitted to wear their own clothing. They also suggested that Aboriginal art and artifacts be displayed in each institution to increase the comfort level of Aboriginal women.

Parole

Aboriginal women who require psychiatric or psychological assessment to be granted parole are usually assessed by white men. They find it difficult to relate to white professionals.

The Task Force adopts all recommendations made by the Task Force on Federally Sentenced Women.

The Task Force Further Recommends:

8.35 **That the Government establish a sufficient number of half-way houses for Aboriginal women, and that these half-way houses be staffed by Aboriginal women.**

8.36 **That, when the police interview an Aboriginal woman, the examination be conducted preferably by a female officer, or if this is not possible, in the presence of an Aboriginal woman.**

8.37 **That when police find it necessary to arrest an Aboriginal for an incident involving family violence, the criminal justice system employ culturally sensitive diversion programs to attempt to resolve the family conflict.**

8.38 **That Canada, Alberta and Indian and Metis organizations develop holistic Aboriginal family-oriented counselling services and male-oriented counselling centres.**

8.39 That the Aboriginal communities be encouraged and assisted in developing safe houses for Aboriginal women, especially in remote and rural communities.

8.40 That Indian and Metis organizations, together with reserves, settlements, and urban and rural communities, develop crises response teams.

Youth

Aboriginal youth coming into contact with the criminal justice system are the product of the social and economic conditions discussed in Section 8(a) and elsewhere in this Report. The briefs and presentations to the Task Force are virtually silent about the needs of Aboriginal youth. As a result, our observations are based on anecdotal information obtained during our visits to reserves, settlements, communities and young offender centres.

The following statistics refer to Indian youth. Similar statistics were not available for Metis, but we have reason to believe that there is little difference.

- the Indian birthrate is two to three times higher than the non-Indian birthrate. This means that, in the next eighteen years, the proportion of Indians coming into contact with the criminal justice system could increase considerably. From birth to age 14, the percentage growth in birthrate is projected to increase by 39% between 1987 and 2011. The increase for those between the ages of 15 - 19 is projected to increase by 50.4%;
- there is a 30% chance of an Indian being born in a single parent family, compared to 12% for non-Indians;
- the infant mortality rate among Indians is four times higher than it is for non-Indians;
- an Indian mother will have at least twice as many children as a non-Indian mother - an Indian child's life expectancy is ten years shorter than that of a non-Indian child;
- there is a 50% chance that the Indian child will not complete grade nine, compared to a 10% chance for a non-Indian child;
- the Indian youth has a 10% chance of graduating from high school, compared to 43% for a non-Indian youth. It has been suggested that an Indian youth is more likely to go to jail than to complete high school;
- there is one chance in three that Indians will be unemployed for most of their life. If they are employed, it will probably be in a manual capacity, and it will be seasonal or short-term work;
- it is thirteen times more likely that an Indian will live in a crowded home (which is defined as more than one person per room);
- an Indian is ten times more likely to die of tuberculosis than a non-Indian. Between the ages of 5 and 14, the rate of tuberculosis is 27 times that of non-Indians;
- an Indian is five times more likely to commit suicide than a non-Indian. In one area of Alberta, the rate is significantly higher;

- Indians are eight to ten times more likely to suffer from a sexually transmitted disease during their life-time than are non-Indians;
- there is a 35 - 40% chance that an Indian will suffer from alcohol abuse, and a 20 - 25% chance of suffering from drug abuse;
- an Indian is susceptible to hepatitis, gastro-intestinal and respiratory infections, diabetes, all forms of heart disease and cancer at a much higher rate than a non-Indian;
- an Indian is three times more likely to die as a result of an accident, violence or poisoning than is a non-Indian;
- an Indian is three times more likely to be committed to a young offender centre than is a non-Indian.

In the year ending December 1989, 1,451 Aboriginal youths were committed to Young Offender Centres. Thirty-six percent of the young offenders of the centres' populations were Indian or Metis. The average number of Aboriginal young offenders in Alberta is 173.

Statistics indicate a disturbing trend with respect to youth and crime. Between 1985 and 1989, there was a 48% increase in the number of youths charged in Alberta. Between 1986/87 and 1988/89, there was a 7.2% increase in the number of Indian and Metis youths appearing before Youth Courts. In the period from 1986/87 to 1988/89, the most significant dispositions of convicted young offenders showed a 1.6% increase in secure custody decisions, a 4.1% decrease in open custody decisions, a 2.1% increase in probation orders, a 13.7% increase in fines, and a 23.4% increase in community service orders. While the sentenced admissions for non-Aboriginals between the period from 1986 to 1989 inclusive dropped by 8%, Indian and Metis young offenders sentenced admissions increased by 18.2%. As a consequence, the proportion of Aboriginal young offenders in the young offender admission population increased from 29.6% in 1986 to 35% in 1989.

More than 60% of the Aboriginal young offenders reported a home address in a major urban area. This figure corresponds with the percentage of adult offenders from urban areas.

Of the offences which resulted in young offenders spending time in custody during 1989/90, 53% were property related offences, 11% were offences against the administration of justice, and 4.8% were offences against the person. The other offences concerned violation of other statutes.

Only 7% of the youth taking advantage of the benefits of the Alternative Measures Program were Aboriginals. From 1986 to 1989, community Service orders cases increased by 153% for Aboriginal young offenders compared to a 100% increase for non-Aboriginal young offenders. There has been a 10% decrease in the number of probation orders for Aboriginal young offenders, compared to a 9% increase for non-Aboriginal young offenders.

The major area of concern identified by the Task Force on the basis of interviews and meetings with young offenders was the number of Aboriginal youth who came from dysfunctional families or broken homes. Most of the young Aboriginals in Young Offender Centres are the product of foster homes, Aboriginal as well as non-Aboriginal. Being raised in a foster home contributes to the lack of identity and lack of culture which are so important to Aboriginal youth. We were told repeatedly of Aboriginal youths being beaten and abused in foster homes. Many of the Aboriginal youth had been in a series of foster homes. As products of foster homes, they frequently do not know who they are. They are rootless, and they are sometimes subjected to alcoholic or abusive foster parents. One case was brought to our attention of an Indian youth who had been in seventeen different foster homes. When we met him, he was in a young offender centre for the seventh time.

Aboriginal youth on reserves and in settlements and to some extent, in urban areas, are subject to intense negative peer pressure which leads to substance, alcohol and drug abuse. This peer pressure is stronger yet in isolated communities, as there is nothing constructive for the youth to do.

Aboriginal youth do not understand the criminal justice system. Many of them believe that when they commit a crime, they are committing a crime against the police or the non-Aboriginal society, and not against their own community.

Most reserves and settlements lack adequate recreational facilities. Where the facilities are present, there is a lack of leadership in taking advantage of those facilities. Aboriginal communities do not appear to be taking advantage of recreational programs and sources of funding. A positive and comprehensive approach to recreation development in Aboriginal communities does not exist.

To address the recreational needs of Aboriginal youth, and to ensure equal opportunity of access, the Alberta Department of Recreation and Parks must as a matter of priority develop a comprehensive framework for action for the Aboriginal community. Such a comprehensive approach must address some of the barriers that prevent the establishment of recreation and leisure services for Aboriginal people. These barriers include: lack of trained Aboriginal staff and volunteers; lack of adequate facilities; lack of long-term funding; lack of a concrete developmental framework, and lack of an accepted umbrella group to facilitate action. The approach should also address the need for the positive targeting of Aboriginal communities with respect to recreation services and facilities needs; training of Aboriginal recreation technicians; and the need for a more flexible approach to funding which reflects community needs rather than re-defines community needs to fit the funding criteria.

To develop such a framework, extensive consultation with the Aboriginal people must take place. Aboriginal people must also be an integral part of implementing any plan of this nature.

The Aboriginal community must be viewed as a legitimate part of the recreational community. This should be reflected by Aboriginal membership on the various recreational bodies and funding bodies, for example, the Alberta Sports Council. In developing the framework, consideration must be given to the spiritual and cultural values of the Aboriginal people and their communities. This would require that non-Aboriginal staff and committee members receive a significant amount of Aboriginal cultural training.

The proper development and delivery of recreational programs has the potential of significantly decreasing the involvement of Aboriginal youth in the criminal justice system and with alcohol and drug abuse.

Recreation is a crime-preventive measure. Programs must have specific objectives such as providing youth with leisure management skills which can be transferred to achieving success in other areas and situations. High impact learning opportunities can be created in which youth learn the value of and the need for preventing and avoiding risk in managing their lives. Recreation programs can also develop leadership skills and provide positive role models. Studies on the impact of recreation in remote northern communities in Manitoba have indicated that recreational development can have very beneficial effects on the communities involved .

A Judge of the Youth Court and the Director of a Young Offender Centre told the Task Force that there was an apparent lack of co-operation and cohesiveness between the Youth Court, Young Offender Centre, and the Department of Social Services in dealing with youth with social service status. In January of 1991, we were advised of a protocol between the Solicitor General's Department and the Social Services Department, which should overcome the perceived problem. We have not had an opportunity to review the protocol, but we recommend that the situation be monitored.

Many Aboriginal youth, whether they are in Young Offender Centres or not, require alcohol, drug and substance abuse treatment to the same or a greater extent than adult Aboriginals. An alcohol treatment centre for youth has been established by Poundmaker's Lodge at St. Paul, Alberta; however, it is too early to evaluate its success. This is a step in the right direction, but more treatment centres staffed by Aboriginals are required. The Alcoholic Anonymous program operating in Young Offender Centres deserves commendation, but it is inadequate to treat the disease of alcoholism. We have heard cries of "help" from many of the Aboriginal youths in the Young Offender Centres. They want treatment and they want to be cured. More treatment centres are required, which should be located throughout the province. It is essential that these centres be staffed by Indian and Metis people.

The Young Offender's Courts in Edmonton and Calgary have lengthy and unacceptable backlogs. A young offender who is not in custody and appears in Court in Edmonton in December of 1990 cannot be tried until August of 1991. We have commented on the delay in Court in our chapter on Corrections.

The Task Force is of the opinion that, although the young offender centres are world-class physical structures staffed by dedicated people, they are still jails, with a level of security that is not required for most Aboriginal youths. Although most youths in the Young Offender Centres come from the urban areas, several of them expressed a desire to be in a less secure institution such as a wilderness camp staffed by Aboriginals.

The Alternative Measures Program appears to be serving non-Aboriginals; however, it is not serving Aboriginal youth. Ninety-three percent of the young offenders who take advantage of the Alternative Measures Program are non-Aboriginal. We have discussed this subject in detail in the chapter on Corrections.

During our visits to Young Offender Centres and in our discussions with Aboriginal youth, we were struck by their sincerity, particularly with respect to their desire to learn more of their Indian or

Metis culture, languages and traditions. Indian and Metis youths are caught between two cultures. Many have never learned about their Indian or Metis culture, but they are still subject to conflicting sets of standards neither of which they seem to understand.

In writing about the Navaho Indians, Clyde Kluckhohn states:

> *The Navaho are torn between their own ancient standards and those which are urged upon them by teachers, missionaries, and other whites. An appreciable number of Navahos are so confused by the conflicting precepts of their elders and their white models that they tend, in effect, to reject the whole problem of morality (in the widest sense) as meaningless or insoluble. For longer or shorter periods in their lives their only guide is the expediency of the immediate situation. One cannot play a game according to rule if there are sharp disagreements as to what the rules are. The incipient breakdown of any culture brings a loss of predictability and hence of dependability in personal relations. The absence of generally accepted standards of behaviour among individuals constitutes, in fact, a definition of social disorganization.*
>
> *A stable social structure prevails only so long as the majority of individuals in the society find enough satisfaction both in the goals socially approved and in the institutionalized means of attainment to compensate them for the constraints which ordered social life inevitably imposes upon uninhibited response to impulse. In any way of life there is much that to an outside observer appears haphazard, disorderly, more or less chaotic. But unless most participants feel that the ends and means of their culture make sense, in terms of a unifying philosophy, disorientation and amorality become rampant. Some major Navaho premises are incompatible with some major premises of our culture. A resolution must be sought in terms of wider assumptions.*[38]

Many Aboriginal youths have had limited exposure to, and only an inadequate grasp of, their history, tradition and culture. They are not at ease in the Indian or Metis world, and they appear to be thoroughly disoriented. Kluckhohn states:

> *This will continue and increase until new coherent philosophical bases for life are created and widely accepted.*[39]

It is unfortunate but true that Aboriginal youths are not following the ways of their Elders, and that the only apparent opportunity they have to learn about their tradition, culture, and history is presented when they are in Young Offender Centres. This is a problem which cannot be solved by the criminal justice system. Like many other problems, it can only be solved by the Indian and Metis themselves. There is a need for Bands on reserves and Settlement Councils to facilitate formal and informal instruction of the young Indians and Metis in their history, tradition, and culture. The need for such instruction in urban areas was identified in the R.C.M.P. Gazette:

> *The trouble is, in most communities, there are not "Elders" as on a Reserve. This means that a most important traditional Native moral and ethical influence is absent. There are Native children who are "city bred" and have never heard of, or even seen, a Reserve and who know nothing of Native cultural traditions or moral values. These are the people most difficult to reach.*[40]

This traditional moral and ethical influence is essential. The Indian and Metis community should take steps to assure that Indian and Metis youth, and indeed all Indian and Metis, have access to Elders.

Aboriginal youths have special needs when they come into contact with the police and the courts. Many of the urban youth are rootless. They are the products of dysfunctional homes which they have left, or of a series of foster homes in which there has been no bonding. There is a lack of family support. Frequently, the police or support workers in the Young Offenders Court cannot contact a responsible adult. The need for early contact an with Aboriginal service organization, duty counsel and Legal Aid is greater than it is for an adult.

One of the most pressing needs of Aboriginal youth is for the availability of more youth emergency shelters. We have heard repeatedly about Aboriginal youths being apprehended when the police or the young offender's court is unable to find suitable accommodation other than the young offender centre. We have been told by the Director of the Edmonton Young Offender Centre that young Aboriginals are frequently denied release pending trial because they lack family support. As a consequence, the Young Offender Centre is the only alternative available to the Justice of the Peace or Judge.

The situation in Edmonton is such that, if a young offender pleads guilty, a trial will not be held for a minimum of three months. If the youth is out of custody, the trial will not be held for six months. The young offender's courts engage in double and triple booking to accommodate an extremely high drop-off rate, caused by a combination of unavailability of counsel, the inability for the Court to comply with the strict pre-trial conditions of the Young Offender's Act, lack of witnesses, and, all too frequently, the failure of the young offender to appear in Court. Failure to appear in Court can be attributed in part to the fact that young offenders in remote areas frequently have to travel a considerable distance to get to Court. They also face the same problems as adults as described in the chapter on Corrections. Sometimes these problems are more severe for youths. Aboriginal youths have a special need to be tried in their own community. The trial should follow the alleged offence as soon as possible. The Task Force has been told of several instances of young offenders committing further offences while on remand.

To serve time in Young Offender Centres, Aboriginal young offenders from remote or isolated reserves and settlements are removed far away from their home communities. It is difficult or impossible for the family, extended family or Elders to visit the youth. The Task Force favours the development of community-operated centres for young offenders, developed to accommodate the needs of the reserves and settlements. These centres should be staffed by Indians and Metis.

As stated elsewhere, the Task Force received virtually no information with respect to urban youth. However, we met with urban youth in Correction Centres, where 35% of the youth were Aboriginal.

Aboriginal youth have special needs when they are in Young Offender Centres. They need frequent contact with their families, extended families and communities. A high proportion of the youth have severe alcohol and drug problems, which points to a need for treatment in the Young Offender Centre. We were told often that programming in Young Offender Centres should be more oriented to Aboriginals. Emphasis was placed on the opportunity for youth to learn their Aboriginal language, and their history, culture and traditions. Youths need access to Elders and other positive Aboriginal role models. Programming at the Young Offender Centres should emphasize the re-establishment of self-worth, development of self-confidence, Indian and Metis history and traditions and culture.

Aboriginal youth have been forced to adapt to a society they do not understand. They suffer a high drop-out rate in school. Many are abandoned, and many leave abusive homes at an early age. They have often suffered a cycle of physical and sexual abuse. Many Aboriginal children engage in substance abuse - especially glue and gas sniffing at an early age. In its brief to the Task Force, the Elizabeth Fry Society emphasized the extremely high percentage of sexual abuse and incest. Aboriginal girls leave dysfunctional homes and come to urban areas where many of them resort to prostitution. There is a high frequency of teen-age pregnancies.

The most frequent offences committed by Aboriginal youth are property related, for example, breaking and entering, shop-lifting, and other theft-related offences. When we asked several groups of young offenders why they had committed these offences, we learned that most offences were committed under the influence of alcohol or drugs, and that the youths were lashing out against the system because of their anger. Most of the property offences were not for the purpose of accumulation but to satisfy immediate needs. Several of the Indian and Metis youth we met in Young Offender Centres were recidivists. Most appeared to be lacking in self-esteem. By committing the offences, they were crying for help.

The Task Force Recommends:

8.41 That alcohol and drug abuse treatment centres be de-centralized and be established where required.

8.42 That Aboriginal youths in a Correction Centre who require treatment for alcohol and drug abuse be given intensive drug and alcohol treatment in a Young Offender Centre if they are unable to be placed in a treatment centre.

8.43 That additional youth emergency centres, preferably community-based, be established to give the Courts an alternative to remanding youths in custody.

8.44 That private homes be contracted to accept, for a limited time, homeless Aboriginal youth released from Young Offender Centres.

8.45 That programs offered to Indian and Metis youth be Indian and Metis-specific, that these programs be delivered by Indian and Metis persons, and that such programming recognize the difference between Indians and Metis as well as the difference in needs between urban youth and youth from isolated rural areas.

8.46 That Indian and Metis leaders and Elders respond to the need for Indian and Metis youth to learn their history, culture, and traditions and their need for the guidance of Elders.

8.47 That Aboriginal communities in conjunction with the Alberta Department of Recreation and Parks, develop a comprehensive framework to address the barriers which prevent the establishment of recreational and leisure services for Aboriginal people.

8.48 That as part of their elementary or junior high education, Aboriginals be given instruction on urban life skills.

8.49 That Indian and Metis organizations, Bands, and Settlements be actively involved in child welfare matters, and that this involvement be facilitated by Canada and Alberta.

8.50 That the Task Force Implementation Committee and the Aboriginal Justice Committee monitor the operation of the protocol between the Solicitor General and the Department of Social Services to ensure an integrated approach to dealing with youth having status with social service who are involved with Youth Court or the Young Offender Centre.

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9.0 An Aboriginal Perspective on Justice

Preamble

Every society has a way of life which sets forth patterns of belief and actions based on premises and categories that are linked and make for an interdependent, coherent whole. This wholeness we call culture. Clyde Kluckhohn states it as follows:

> *Each different way of life makes its own assumptions about the ends and purposes of human existence, about ways by which knowledge may be obtained, about the organization of the pigeon-holes in which each sense datum is filed, about what human beings have a right to expect from each other and the gods, about constitutes fulfilment and frustration. Some of these assumptions are made explicit in the lore of the folk; others are tacit premises which the observer must infer by finding consistent trends in word and deed.*[1]

In other words, a culture is much more than a set of skills for making a living or a set of rules for relating to others.

Every society has many distinctive ways and assumptions which are traceable to very deep and implicit convictions about what human life and existence is all about. These implicit convictions are so taken for granted that it is difficult for an insider to know how all other human beings can possibly see the world in any other way. The problems that Aboriginal people have with the criminal justice system are, to a large extent, a result of the implicit convictions of white society embodied in Canadian law. The end result is a clash of two cultures. For the Aboriginal people of Alberta, this results in non-fulfilment and frustration of expectations because the criminal justice system does not embody their implicit convictions about life and existence.

In this section of the report, an attempt will be made to describe the premises on which the cultures of Indians and Metis and of White society are based. It is not our intention to present a complete thesis on the subject. Rather, only the essential substance of the underlying premises of each culture are presented. Furthermore, the subject is, of necessity, addressed through generalizations. Clearly, Indian, Metis and White societies are diverse.

However, there is sufficient commonality within a society to give credence to the generalizations and to interpret variations as idiosyncratic colourings of the general themes.

Discussion

The underlying premises of any culture are the result of a combination of several factors, including the worldview and values of that culture. The nature of the underlying premises of White society can be characterized as "linear and singular", and "specialist and product oriented." Linear thinking is very well illustrated by Western European concepts of time. Time is conceptualized as a straight line. It is like a river flowing toward the self and flowing on past. What is immediately around the self is the present. What is behind the self is the past. The future is upstream. But one cannot see very far upstream because of a waterfall which serves as notice that one cannot predict the future. This straight line is objectified by White society as quantity, as lengths made of units. A length of time is envisioned as a row of similar units. For instance, a day is a unit, and therefore, separate and different from other units. The consequence is that each day is a different day; each day is a new day. Another ramification of thinking about time in this manner is that time flows in one way only. Once a day-unit goes by, it will never return. Wasting and making up time combined with values that speak to productivity result in ideas about the efficient use of time.

Linear thinking lends itself to a singularity of view. Implicit is the idea that a line leads only to one thing. Ramifications of this idea are beliefs that there can be only one god, only one true answer, one and only one way. Horizontal and hierarchial chronologies are still other outgrowths of the linear and singular worldview.

Every society has positive and negative sanctions; rewards for living according to the prescriptions of the culture and ostracisms for deviations from the prescriptions. Positive cultural prescriptions that result in rewards, recognition and prestige are called social values. Values are usually part of the implicit and unstated part of the culture. The values that arise out of a linear/singular worldview will differ markedly from a wholistic/cyclical worldview. A linear view implies a number of things. A line can be divided into units; a line has two opposing ends; a line is singular in direction; a line can be horizontal or vertical. Using these characteristics of a line, a number of social values implicit in linear thinking can be illustrated. Categorizing, dichotomizing, and reduction to smaller units are examples of the divisibility of a line. The opposing ends of a line leads to either/or modes of thought: good/bad, saint/sinner, big/small, fast/slow, new/old, day/night.

In terms of value judgements, good is preferred over bad, saint over sinner, faster over slower, bigger over smaller, and newer over older. The singular nature of a line leads to values that imply "only one answer, one true way, one golden rule, one god, and so on." Hierarchial orders are the result of a line in a vertical position. The consequences are values that prefer higher over lower, the leader over a commoner.

A linear/singular worldview leads toward specialist and product orientation. The singular nature of a line results in a singular identity and being a something.

Personal identification is drawn from a specialty such as lawyer, teacher, doctor, mechanic, and so on. If people cannot apply a label of some kind to themselves, they are "a nobody" in terms of social status. The movement from A to B to C on a line orients one toward achievement of a goal or the achievement of a product.

Language is one of the systems an observer can use to find consistent trends and patterns. In other words, language, to a large extent embodies, implicitly, the worldview and values of a culture. For instance, English reflects the linear worldview. It is a language that has a bias for nouns or identification. Identification complements categorizing and dichotomizing, and the notion of "thing" or product. One can conclude that English is noun-rich, but action-poor.

In contrast to White society's linear/singular worldview, the Indian and Metis worldviews can be characterized as cyclical/wholistic, generalist, and process oriented. The cyclical/wholistic view looks at time in terms of cosmological cycles and patterns and not in terms of an artificial creation of "time units." Cosmological cycles are generally imperceivable in terms of change. Consequently, time at the functional, operative, day-to-day level is not considered dynamic, and therefore, is not an important referent. The wholistic view leads to an implicit assumption that everything is inter-related. Inter-relatedness leads to an implicit idea of equality among all creation. Equality is brought about by the implicit belief that everything - humans, animals, plants, and inorganic matter - has a spirit. Anthropomorphic factors are not important because metamorphosis readily occurs. The common denominator is the spirit.

The cyclical/wholistic view can be described as "looking at the forest as opposed to the trees." Implicit in the cyclical/wholistic view is "generalism" and constant motion. In other words, there is a bias toward generalist knowledge and process. This arises out of the slow and imperceivable but continuously changing patterns in the cosmos and the interrelationship of all creation.

Similar to the reflection of Western European values in the culture of White society, the cyclical/wholistic view embodies values that are implicit reflections of the worldview. The cyclical aspect leads to respect for cycles, phases, and repetition. A circle can be viewed as a whole. It has no beginning or no end, but it can be viewed as going round and round, not unlike the cyclical patterns of the cosmos. Repetitive patterns do not lead to goal orientation as they would in a linear view. Rather, they focus on the process. Implicit is the belief that if the process is followed, a product will happen.

When a circle is viewed as a whole, implicit convictions arise that, in the case of a society, the whole or the group is more important than a part or the individual. Being part of the group is better than being alone. The whole, combined with interrelatedness, results in values suggesting harmony and balance. Implicit in cycles and wholeness is generosity and sharing; everyone shares and shares alike. No one should be more important, wealthier, or different from everybody else.

Aboriginal languages, like other languages, are repositories for many implicit convictions. Benjamin Whorff states:

> *Every language contains terms that have come to attain a cosmic scope of reference, that crystallize in themselves the basic postulates of an unformulated philosophy, in which is couched the thought of a people, a culture, a civilization, even an era. Most metaphysical words in hopi are verbs, not nouns as in European languages.*[2]

Here, Whorff points out the process orientation of the Hopi language in comparison with the noun or product-oriented English language. Blackfoot and Cree are not unlike Hopi. The categorizing process in most Aboriginal languages classifies almost all things as animate. Inanimate categories are nearly non-existent. If most things are animate and if all things have a spirit, then humans can relate to not just other humans, but also to animals, plants, and even inorganic matter.

The basic foundations - those rules of a culture that are dominant in the control of the behaviour of the members of a society - are worldview and value constituted. The underlying premises of White society can be articulated as follows:

> *God created the universe, the earth, and everything in it and on it.*
>
> *God created humans in His own image and gave them dominion over everything.*
>
> *God had a chosen people that He blessed to show the true way for all others.*
>
> *Creation is divisible.*
>
> *Individuals are more important than the group. Nations exist to protect and provide for individuals.*
>
> *Property is individually ownable, including land.*
>
> *Knowledge is the learning of skills for a comfortable living.*
>
> *Accumulation of wealth is a sign of success.*
>
> *Social order is hierarchical.*
>
> *The earth and everything in and on it is for the benefit of man.*[3]

The underlying foundations of Indian/ Metis culture can be stated as follows:

> *The Creator made everybody, as equals, including humans, animals, plants, and inorganic life.*
>
> *Everybody is inter-related with everybody.*
>
> *Existence consists of energy and is expendable.*
>
> *The energy quotient of creation is rechargeable through ritual.*
>
> *Man is subordinate to, and a mere part of creation.*
>
> *Other-than-human beings have knowledge that humans do not have.*
>
> *Attainment of the knowledge of other-than-human beings is power.*
>
> *Harmony and balance brings about happiness, order, beauty and health.*
>
> *The group is more important than the individual.*
>
> *Aggressive tendencies bring about disorder and imbalance.*
>
> *All land and resources belong to the group.*
>
> *Individual property is private but should be generously shared.*
>
> *Individuals are important and should be given a lot of freedom.*
>
> *Disorder is corrected through rehabilitative and restorative action.*

> *Everything in the universe and on earth is alive and has a spirit.*
>
> *Anthropomorphic aspects are not important.*
>
> *Metamorphosis occurs readily.*[4]

The above premises, even though they are not exhaustive, are sufficient to point to differences between Aboriginal and White culture.

But what is the significance of these underlying premises as regards the criminal justice system? The significance lies in the fact that the law may embody these premises with respect to dispute resolution, and the system that comes into being will have certain assumptions and expectations. Adamson Hoebel observes about the Cheyenne:

> *As an operating system, Cheyenne law is remarkable for the degree of juristic skill that is manifest in it. By juristic skill we mean the creation and utilization of legal forms and processes that effectively and efficiently solve the problems posed to the law and in such a way that the basic values and purposes of the society are realized and not frustrated by rigid legalism. Juristic skill implies the ability to define relations between persons (trouble cases) in ways that effectively reduce internal social tensions and promote individual well-being and the maintenance of the group as a group. For them the law is corrective; it is never employed as a vindictively punitive measure. Punishment, in their view, need not go further than is necessary to make the individual see the right. Once they are convinced the knave is reformed, they move smoothly to reincorporate him into the community.*[5]

John Henry Provinse makes the following observation about Plains Indian justice:

> *Another characteristic of Plains justice, as shown in the hunt proceedings, must be remarked upon here. That is the order-preserving nature of the punishments inflicted as opposed to the idea of punishment for the sake of social vengeance. Uppermost in the minds of the Police and their superiors was the need for conformity to tribal regulations evoked to preserve the social order. This is clearly brought about by the attitude of the society to the offender after punishment had been inflicted upon him. Conformity, and not revenge was sought, and immediately after a promise to conform was secured from the delinquent, steps were taken to reincorporate him into the society.*
>
> *Law may or may not be a matter of government, although it is always a matter of political organization - the system of regulation of relations between groups or members of different groups within the society at large.*[6]

Law may be public or it may be private. Public law is the body of rules that are held to be of importance to the society as a whole. Public officials are appointed or elected to administer these rules. Violations of public law are held to be offences against the society at large. Private law is the body of law that governs the relationships between individuals. It may not be of immediate or direct concern to the society at large, but it is still an important aspect of political organization. In White society, law and justice are largely matters of public law while among the traditional Aboriginal societies, law and justice were largely private.

Justice and dispute resolution in White society can best be illustrated by a retributive model of justice which includes the following:

> *Crime is a violation of the state.*
>
> *The focus is on establishing blame or guilt.*
>
> *Truth is best found through an adversarial relationship between the offender and the state.*
>
> *Punishment deters and prevents.*

Justice is defined by intent and process (right rules).

Community does not play a leading role.

Action revolves around the offender.

Accountability of the offender is put in terms of punishment.

Offences are strictly legal and devoid of moral, social, political and economic considerations.

Past behaviour is an important factor.

Social stigma of criminal behaviour is almost unremovable.

Remorse, restitution, and forgiveness are not important factors.

Offenders play a passive role depending on proxy professionals.

Justice and dispute resolution in traditional Aboriginal societies can be illustrated by a restorative model of justice which includes the following:

Crime is a violation of one person by another.

The focus is on problem-solving and restoration of harmony.

Dialogue and negotiation are normative.

Restitution and reconciliation are used as a means of restoration.

Justice is right relationship and harmony.

The community acts as a facilitator in the restorative process.

The offender is impressed with the impact of his action on the total order.

The wholistic context of an offence is taken into consideration including moral, social economic, political and religious and cosmic considerations.

Stigma of offences is removable through conformity.

Remorse, repentance and forgiveness are important factors.

Offenders take an active role in the restorative process.

The above models of justice and dispute resolution result in different relationships and expectations. For instance, Rupert Ross points out differences between expectations in the different systems. He states that the aim of the Indian dispute resolution system is real resolution, restoration of co-operative co-existence and the elimination of bad feelings. Indians expect the criminal justice system to do the same. Having realized that the White system does not aspire to the same goals as the traditional system, they now want to dismiss it from their communities so that they can revert back to their own system.

John Loftin sees the problem that Native Americans have with the law as one of a cultural clash. He sees as the cause of the problem the embodiment in law of modern capitalistic economic theory as expounded by Adam Smith in "Wealth of Nations." According to Smith, humanity has a natural propensity toward progress, evolving from subsistence modes of hunting, herding, and farming to a capitalist industrial economy. His theory holds that civilization is the fulfilment of the natural human propensity for the exchanging of surplus goods, and the consequent intrinsic desire to accumulate wealth. According to Smith, humans who do not have an exchange economy are not civilized and are, therefore, not fully human. Loftin argues that the embodiment of Smith's economic theory and definition of civilization is implicit in

American law - which is not unlike Canadian law - at an unarticulated level. One of the results is that Native Americans, because of their different culture, were not accepted as fully human by Western Europeans. This explains, in part, the great efforts to civilize and convert Indians to Christianity. According to this view Loftin argues is the justification by White society for the trials and tribulations of Native Americans including cultural genocide as the price paid for a greater good, namely civilization and Christianity.[7]

The embodiment of economics, efficiency, Christian values, and Smith's concept of progress and civilization are as evident in Canadian law as they are in American law. The implicit convictions that arise out of this embodiment will not change in the foreseeable future because the legal profession is blind to this kind of cultural phenomenon. In other words, the legal profession's implicit convictions are so deep and so taken for granted that it is hard for people in this profession to see how it could possibly be different in the minds of another people. Until the implicit convictions of Indian and Metis people are included in the underlying premises of Canadian law, Aboriginal people will continue to have "run-ins" with the law. High incarceration rates will continue to be the norm. Louise Mandell puts this view in terms of "Native Culture on Trial."[8] Rupert Ross observes that:

> *It is now the judgment of many Bands that the price inherent in adopting our process is too great in light of (its) failure. Many want us to leave, taking our unproductive, perhaps destructive judicial system with us. More voices join the call for "self-government.*[9]

One can add, more voices are calling for their own justice systems.

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10.0 Ongoing Process

Preamble

It is impossible for the Task Force to know which programs and initiatives will be implemented pursuant to its recommendations. The wording of this Term of Reference is unfortunate because it permits Government to select favoured recommendations, with the result that only those recommendations will be monitored by the ongoing process. Many of the recommendations made in this Report depend upon other recommendations being implemented. We assume that the ongoing mechanisms we recommend will monitor all of the Task Force's recommendations.

Some of the recommendations will require a response and reaction from the Government of Canada, for example from Correctional Services Canada, the R.C.M.P. and the National Parole Board. The remainder will require a response from relevant ministries in the Province of Alberta.

Findings and Recommendations

Term of Reference:

Ongoing Process 9.0

to formulate a process for the ongoing monitoring and upgrading of programs and initiatives implemented pursuant to the recommendations of the Task Force.

Complaints Procedure

The Task Force met with Aboriginal people who expressed concerns about the conduct of individuals within the justice system. Complaints of abuse or rude and unprofessional conduct by police, administrators, lawyers, judges, corrections staff and even service providers were brought to our attention. When we asked if the appropriate disciplinary bodies had been made aware of the concerns, more often than not the answer was no. The reasons given for this lack of action were varied. People told us that they believed nothing would be done or that retaliation against the complainant would occur. The complaint procedure was not known; or if it was known, it was viewed as too complicated and too much of a burden with respect to the complainant's time and energy. In some cases, the procedure itself was intimidating and not considered "user friendly." We have been told that Aboriginal complainants, because of their culture, are often non-interventionist, quiet and unlikely to confront people in authority with complaints. In some Aboriginal cultures, it is considered to be extremely rude to make such criticisms.

Often, Aboriginal complainants are not familiar with or used to the "process." Even if they are inclined to make a complaint, they have a difficult time understanding the necessary forms and procedures to do so.

At the same time, the lack of complaints by Aboriginal people is often noted. This lack creates a false impression that Aboriginals are content with the system. Authorities are led to believe that there are no or very few instances in which complaints by Aboriginals are warranted.

Complaints are not just a measure of dissatisfaction – they also serve to allow the appropriate authorities to review attitudes and action, and they provide a framework in which it is possible to alert people to offensive conduct, unintentional or not, and to guard against that conduct. Most certainly, complaints allow intentional inappropriate conduct to be addressed, and facilitate positive change.

A mechanism which works properly and effectively can be a positive vehicle for improvement. Such a mechanism would generate confidence not only in the system, but also among Aboriginals. Such a mechanism would be openly available as a tool to publicly test and question the system. It would serve to dispel criticism of the complaint procedure, including suggestions that the system is protective, secretive and oriented to the status quo.

Every component of the criminal justice system has a well-established and potentially effective mechanism in place for dealing with complaints. The public service has internal reviews and disciplinary procedures which are subject to review by Arbitrators in keeping with Collective Agreements in place between the unions and the government. Lawyers are subject to disciplinary proceedings through the Law Society. Judges are accountable for their actions to Chief Justices and Judicial Committees. The police are subject to complaints to public complaint bodies and to disciplinary action. While all of these procedures are potentially effective, there is a perception that they are under-used and perhaps even inaccessible to Aboriginal complainants.

It is the view of the Task Force that for these complaint procedures to be effective they must be used by Aboriginal people. In addition, reasons given for lack of access by Aboriginals must be addressed. We believe that one way to address these issues is to provide assistance to Aboriginal complainants and a liaison between the Aboriginal complainant and the various disciplinary bodies. We suggest that the Aboriginal Justice Commission proposed elsewhere in this Report be given the mandate to act in this role. We consider it imperative that this Commission be authorized to receive complaints directly from Aboriginals about any employee of the criminal justice system and be given the authority to advance that complaint to the appropriate complaint mechanism. We see it as equally important that the various complaint mechanisms acknowledge the Aboriginal Justice Commission's role and report back to the Commission with respect to the status and outcome of every complaint advanced by the Commission. Feedback and discussion regarding complaints is second in importance only to the resolution of the complaint itself. The Commission may collect statistical information and monitor the overall level and nature of complaints to identify appropriate policy and procedural changes for dealing with the general concerns of Aboriginal communities. The Task Force is of the opinion that this approach will contribute to making the criminal justice system generally more accountable, approachable and receptive to Aboriginal people.

Monitoring

We are of the opinion that the monitoring bodies must be composed of Aboriginal representatives and spokespersons from both levels of Government. These bodies must be free of the influence of the departments responsible for implementation of specific recommendations. Conflict of interest must be avoided.

We recommend the creation of a short-term committee which could be called the Task Force Monitoring Committee and of a long-term Commission which could be called the Aboriginal Justice Commission. The Task Force Monitoring Committee would be a temporary body to monitor those recommendations which could be implemented within about eighteen months. It would be replaced by the Aboriginal Justice Commission, which among its other duties would monitor those recommendations which are of a long-term or continuing nature. The Task Force Monitoring Committee could be merged with the Aboriginal Justice Commission.

The Task Force Recommends:

10.1 Short Term: This Task Force was created by an Alberta Order-In-Council. Consequently, we have been hesitant to place too heavy an onus on the Government of Canada for implementation of recommendations. We recommend that the Government of Alberta establish a committee which could be called the Task Force Monitoring Committee. One member would be appointed by Canada, one by Alberta, one member appointed by the Indians and one by the Metis. The Chairman should be chosen by the Committee and should not be one of the appointees. If the Committee cannot agree on the appointment of the Chairman, a Chairman could be appointed by the Government of Alberta. The Chairman would preferably be Aboriginal. The Task Force Monitoring Committee would meet as required. We do not see this Committee as requiring a full-time commitment from its members.

The main objective of the Task Force Monitoring Committee would be the monitoring and up-grading of programs and initiatives implemented pursuant to the recommendations of the Task Force. The Committee should have the power to make enquiries of Government and the criminal justice system, and to investigate components of the criminal justice system, to ensure that the recommendations are

implemented. The Committee must have ready access to Ministers, Deputy Ministers, and any other person, organization or institution responsible for the policy or the operation of the criminal justice system. The Committee would meet as required. It should send a quarterly report of its activities and findings to the federal Solicitor General, the federal Minister of Justice, the Solicitor General of Alberta, and the Attorney General of Alberta. Within a year after its establishment, the Committee would table a Report of its proceedings. Recommendations for implementation should be made at that time to the Speaker of the Legislative Assembly of Alberta, to be tabled before the Legislative Assembly. A copy of this Report would be forwarded to the federal Solicitor General, the federal Minister of Justice, the Indian Association of Alberta, and the Metis Association of Alberta.

10.2 Long Term: We recommend the establishment of an Aboriginal Justice Commission, which, within eighteen months of the filing of the Report of this Task Force with the Alberta Solicitor General, would assume all of the powers and duties of the Task Force Monitoring Committee. The broad mandate of the Aboriginal Justice Commission would be:

i) To assume the duties and powers of the Task Force Monitoring Committee.

ii) To facilitate communication between Indians, Metis, Government and components of the criminal justice system.

iii) To negotiate a framework agreement between the Government of Canada, the Government of Alberta, the Indians, and the Metis which delineates the jurisdictional and financial responsibilities of the Government of Canada and the Government of Alberta toward Indians and Metis with respect to all components of the criminal justice system.

iv) The Aboriginal Justice Commission would employ an Aboriginal Advocate who would accept all complaints against any person or component of the criminal justice system, and who would ensure that all complaints are processed by existing complaint mechanisms in the criminal justice systems. The Aboriginal Advocate would follow a complaint through the mechanisms until it is resolved and appeals, if necessary, are exhausted. The Aboriginal Advocate would keep the complainant informed of the progress of the complaint and advise the complainant the ultimate result. The Aboriginal Advocate would also compile statistical information and monitor the overall level and nature of complaints to identify required policy and procedural changes.

v) The Aboriginal Justice Commission would act as an informed clearing house to assist Aboriginals in directing their concerns about the criminal justice system to the appropriate government department or agency. The Commission would also facilitate contact and communication between Government and Aboriginals. This process should reduce direct contact between Aboriginals and Ministers or Deputy Ministers. It should, however, not preclude Indians and Metis from dealing directly with Ministers and Deputy Ministers.

vi) The Aboriginal Justice Commission would be an informed body which could assist governments and departments in developing policies related to Indians and Metis with respect to the Criminal Justice System.

vii) The Aboriginal Justice Commission should have at least five members: one Metis, one Indian, one appointee of the Government of Canada and one appointee of the Government of Alberta. The Chairman (who should preferably be Aboriginal) should be independent of Government, and be chosen by the other four Commission members. In the event of a tie, the Government of Alberta should appoint the Chairman, who would preferably be an Aboriginal.

viii) The Aboriginal Justice Commission would table a Report of its proceedings and recommendations for implementation to the Speaker of the Legislative Assembly of Alberta. This Report should be tabled before the Legislative Assembly within one year of the creation of the Commission and annually thereafter. Copies should be sent to the Solicitor General of Canada, the Indian Association of Alberta, and the Metis Association of Alberta.

11.0 Alternatives

Preamble

As outlined under Scope B1(d) in the Task Force Terms of Reference, the Task Force has responsibility

> *to consider alternative methods of dealing with Indian and Metis people involved with the criminal justice system that take into account Indian and Metis cultures, languages and special needs, and to recommend changes that can be equitably and readily achieved to the existing system that take into account culture, languages and special needs of Indian and Metis people, particularly Indian and Metis youth.*

Alternative Approaches to Justice for Aboriginal People

The Terms of Reference include the specification that any recommendations made by the Task Force were to have regard for the present constitutional and legal framework in Canada and Alberta. On one hand, the scope of our Terms of Reference invited us to explore the concept of legal pluralism. On the other hand, the Terms restricted us to the constitutional and legal framework in Canada and Alberta. We agreed that the question of legal pluralism must be addressed by this Task Force. However, we have done so with some reservations. By means of block funding arrangements with a number of Bands, the federal government has given responsibility for education, social services, health and public works to some Band administrations. However, neither the federal nor the provincial government has recognized the Aboriginal desire for their own justice system.

The First Nations maintain that control of the criminal justice system as it applies to Aboriginals is a sovereign right of the First Nations. The Indian Association of Alberta stated in its Brief:

> *Prior to the signing of the Treaties, our ancestors had their own laws and maintained for themselves order in their societies. The Treaties confirm we have the authority and responsibility to maintain peace and good order among ourselves and on our lands. They solemnly confirm what already existed. The provisions to "maintain peace and good order between each other" in the Treaties, clearly recognizes and protects our rights to maintain peace and order in our communities. The Treaties do not take away or limit our right to keep our own forms of law and order among ourselves.*
>
> *We always had those powers given to us by the Creator to our ancestors. We are not asking the Federal and Provincial Governments to give us any rights that we do not already have. The Federal and Provincial Government must recognize and affirm that such rights are stipulated in the Treaties, and that, in modern times, this includes the right to maintain our own system of peace and order.*[1]

The Indian Association of Alberta has reviewed a separate system of justice. The Association has put forth a recommendation for a pilot project implementing a separate justice system.

The Lesser Slave Lake Indian Regional Council suggested a gradual transition to an Indian Tribal Justice System. They stated:

> *The Lesser Slave Lake Indian Regional Council is proud of its track record, credibility it has built up over the years, and its vision of Indian control over their future as communities with a distinct identity, culture, language and aspirations. Among these aspirations, controlling their own free Tribal Justice System is a positive goal. However, the Regional Council is also aware of its current capabilities, and recognizes that a gradual transition to control is best achieved by making an impact within the existing system. To start slowly and gradually grow has been the pattern of the Regional Council...Our recommendations are designed to offer a first step on the road to the ultimate goal of a free Tribal Justice System within the region of the Lesser Slave Lake Indian Regional Council.* [2]

The Saddle Lake Band in Alberta, with the financial assistance of the Alberta Law Foundation created a Tribal Justice Research Centre to develop a model or a plan for a Tribal Justice System at Saddle Lake. The Band has drafted a Constitution which contains this model. The proposal acknowledges that certain offences and other matters must be referred to the existing justice system.

The Task Force commends the Saddle Lake Band for its initiative in developing the proposal. The model reflects the criteria emphasized in most of the Briefs we received from Aboriginals. These criteria include:

A. that the Tribal Justice System be an Aboriginal initiative;
B. that it be staffed and administered by members, and apply only to members;
C. that it adopt and codify Aboriginal ethics, traditions, and concepts of justice

The Chief of the Saddle Lake Band advised the Task Force that the tribal justice system has not yet been implemented only because it has not been possible to obtain the necessary funding. We see a great deal of merit in the Saddle Lake proposal and urge continued study on the possible implementation of the proposal on a pilot project basis.

The Task Force was concerned about the application of the Charter of Rights to the proposed system. We are uncertain of the right of a Band member to opt out of the tribal justice system. We are further concerned about the right of appeal to the existing court system.

Court Models for Aboriginals in Canada

We will address a number of alternative justice systems to deal with Aboriginal people which take into account Indian and Metis cultures, languages, and special needs. The first five models, some of which are discussed under courts, are based on the existing court system. They are clearly within the present constitutional and legal framework in Canada and Alberta. The sixth model requires federal legislation. The last model involves recognition of Indian sovereignty, which includes the right of Indians to have their own justice system in whichever way they choose to organize it.

A. The present system, with legally trained non-Aboriginal Judges usually sitting off Reserves and Metis Settlements.

B. An enhanced present system as above, with the addition of a sentencing panel consisting of two Aboriginal Elders or respected members of the Indian and Metis communities who would advise the Judge with respect to sentencing.

C. A partially indigenized present system. The present Canadian model with the addition of some Aboriginal Judges, Prosecutors, defence counsel and court staff.

D. An indigenized present system. The court would be totally composed of Aboriginals. Preferably, it would sit in areas which are predominantly Aboriginal. This court would be the only provincial court in the area and could also deal with non-Aboriginals. One court could operate in the Lesser Slave Lake Indian Regional Council area. Another similarly constituted court could operate in the area south of Calgary. This model would be most adaptable where there is a strong regional tribal council. The areas suggested are examples only. The Task Force is aware that there are other strong regional tribal councils. In areas with a concentration of Metis, a similarly constituted court could preside, which would be composed of Metis. The operation of such courts in urban areas presents a problem. However, the number of Aboriginals in Edmonton and Calgary exceeds the population of any Reserve or Settlement in Alberta, which would make it possible for such a court to function in the larger urban areas.

E. A system of lay Judges and Justices of the Peace courts. Judges of the Provincial Court are not required to be lawyers, although the Government has not appointed a non-lawyer to the Provincial Bench for about fifteen years. Lay Judges and Justices of the Peace would only be appointed after an intensive period of training and upon appointment, the lay Judge and Justice of the Peace would sit in court with the Provincial Court Judge for observation and training. These courts would be modelled on the present court system. The Justices of the Peace and lay Judge would be resident in the community or in the tribal area. The Justices of the Peace should have a dual appointment under Section 107 of the Indian Act and the Provincial Justice of the Peace Act. There would be an administrative limitation on their jurisdiction and they would be limited to the granting of bail, accepting guilty pleas to all provincial offences, trying specified provincial offences, accepting pleas and trying all federal summary conviction offences. Lay Judges or Justices of the Peace would be Indian or Metis. They would be given an intensive period of training and orientation with a Provincial Court Judge. They would preside in areas with a heavy concentration of Aboriginals. The Judge would be appointed under the Provincial Court Act, and would have all of the powers of a Provincial Court Judge. The purpose of having a lay Judge is to bring to the community a Judge who is familiar with Indian or Metis culture, traditions, and methods of dispute resolution.

F. A federally constituted Indian Court. This court would require the Government of Canada to engage Section 101 of the Constitution Act 1867 which confers jurisdiction on the federal government to "provide for the establishment of any additional courts for the better administration of the laws of Canada". Section 91 (24) of the Constitution Act 1867 gives the federal government broad authority over "both Indians and lands reserved for Indians." These sections, together with Section 35 of the Constitution Act, would provide that a Federally constituted Aboriginal Court be established. If Canada establishes such a Court, it could be given the jurisdiction to apply Aboriginal law practices and sanctions. This means that a federally constituted Indian Court could have jurisdiction on Indian Reserves. The jurisdiction of this Court would be limited in that it could only administer the laws of Canada. If Canada were to recognize the Aboriginal right of Indians to have their own Criminal Justice System, this court would be able to apply Indian law, Indian police practices, Indian court procedures and sanctions, and correctional systems which are sensitive to Indians.

As we recognize the possibility of the establishment of such a court, the Task Force is aware that a new level of courts, Judges, bureaucrats, and court staff would be created and that the cost would be significant. The Blood Tribe has urged the establishment of such a court to meet their aspirations. This court would complete the Blood Tribe's circle of government which now has executive and legislative branches but lacks a judicial branch.

G. An Aboriginal Justice System. The Indian Association of Alberta explained the legal basis for a First Nations justice system as follows:

> *First Nations of Treaty 6, 7 and 8 within Alberta have always held the right to manage and govern their own affairs. When they signed the Treaties with the Crown, they promised to uphold the laws of this country and respect the Treaties entered into between the parties. They reserved and kept for themselves, the right to maintain and uphold peace, law and order among themselves. The representatives of the Crown accepted this reservation and also promised to respect the rights described in the Treaties. This fundamental right to govern and regulate conduct among ourselves has been usurped and ignored by both Federal and Provincial governments in Canada, especially in matters involving the Criminal Justice System.*
>
> *The political growth of First Nations has reached the point where many of our First Nations are now asserting the inherent right to self-determination which was never surrendered or given up in the Treaties.*
>
> *As Justice Kirby presented his Report, "Native People in the Administration of Justice in the Provincial Courts of Alberta" in 1978, the political, legal and constitutional position of First Nations in Canada has changed dramatically.*
>
> *Our Aboriginal and Treaty rights are now incorporated into the Constitution of Canada and Section 35 of the Constitution Act, 1982, which provides:*
>
> *Section 35 (1) The existing Aboriginal and Treaty rights of original peoples of Canada are hereby recognized and affirmed.*
>
> *Our legal rights have been recognized by the Supreme Court of Canada, which means several rulings with far-reaching implications. The Supreme Court of Canada rulings provide directions for the Federal and Provincial*

> *governments to recognize, respect and uphold Indian, Aboriginal and Treaty rights. The Supreme Court decisions are a guide for the Federal and Provincial government's conduct in dealing with Indian First Nations.*
>
> *The Indian First Nations Aboriginal and Treaty rights clearly include the right to make rules that govern conduct on our own lands and give us a say in how the laws of Canada affecting First Nations are to be enacted and enforced.*[3]

Indian people in Alberta, as well as throughout the country, are increasingly calling for a parallel or separate justice system. Some view a separate justice system as a matter of inherent sovereignty. For others, it is a matter of right and for others again, it is a matter of Aboriginal Government. Sometimes, calls for a separate justice systems arise from cultural clashes and systemic discrimination. The Task Force believes that sovereignty addresses the authority to establish a justice system, but it does not address delivery. Secondly, the Task Force believes that sovereignty is a political issue and a matter to be settled at a constitutional level, rather than one to be explored by this Task Force. If and when the issue is settled, it will answer the question of who has the legal and constitutional authority to establish a justice system. However, the delivery system will not necessarily be different regardless of which government establishes the system.

Many organizations and individuals, including the Canadian Bar Association Native Law Subsection, hold that there is a sound constitutional basis for legal pluralism in Alberta and Canada. They are of the opinion that a system of justice for Indian and Metis people can exist within the Constitutional framework:

> *In the context of alternative native justice systems, we endorse the importance of legal pluralism within Canadian Confederation and recommend that priority should be given by governments in their allocation of criminal justice research funds to encourage the development as pilot projects of working models of contemporary native justice systems. We believe that there is a sound constitutional basis for the development of parallel native justice systems. We have, however, refrained from endorsing any particular model, because the particular model will be linked with an Indian nation's or native community's view of its path towards self-determination and ultimately it is for them to choose. It is not unrealistic to anticipate that models of aboriginal justice systems can be worked out in a Canadian context, which, cognizant of the experience of other jurisdictions, can reflect the accumulated wisdom of both aboriginal law ways and the common law.* [4]

The Task Force acknowledges that the contrary view can exist.

The Task Force Recommends:

11.1 That we favour the view of the Canadian Bar Association Native Law Subsection. Whether an Aboriginal Justice System should exist and its scope and extent, is a matter for negotiation between the Indian and Metis people and the Governments of Canada and Alberta.

Diversion Policy

The Task Force has observed that tremendous expense and effort is allocated in the criminal justice system for processing Aboriginal people accused of minor offences involving provincial statutes such as the Liquor Control Act, the Highway Traffic Act, and the Motor Vehicle Administration Act. The police, court and correction components of the system use their processes, administrative resources and programs such as the fine option program for dealing with offences which many do not consider to be criminal in nature. Legislative regulation of public conduct has seemingly increased to such an extent that almost all human activity is constrained to some degree by legislation and the risk of prosecution. Aboriginal people appear to be over-represented in many of these types of prosecutions. A clear example is the illegal possession of liquor. In some cases, these offences have little or no relevance to the community. Driving off-road vehicles on highways has been given as an example of an offence not considered serious in a remote Aboriginal communities. Many of these offences carry specified penalties of set fines. As we have noted, fines are inappropriate for poor people. We have also noted the frequently repeated concern that the criminal justice system is overburdened and taxed beyond its limit in all areas from policing to courts to corrections. To relieve this system of "minor" matters and to allow for some form of alternative disposition seems to be a worthwhile and attainable objective. Various suggestions have been made for achieving this goal. The Task Force has not had the time or resources to explore alternatives in any depth. However, we would be remiss if we did not identify some alternatives for further discussion and review by the Government of Alberta.

It has been suggested that de-criminalizing certain conduct or removing certain conduct from offence sections of legislation may be warranted. This is particularly so from the perspective of remote Aboriginal communities, where the offence sections may not reflect the community's sanction of particular conduct. We urge the Aboriginal community to communicate these concerns to elected officials. We also urge the Government of Alberta to be sensitive to cultural, geographic and other factors which may make some offences inappropriate in Aboriginal communities.

We have observed that the necessity to appear in court, personally or by agent, for all summary conviction offences except those which have specified penalties causes considerable hardship for Aboriginals who must travel a long way to court merely to enter a plea and have a trial date set. It has been suggested that a more streamlined process for entering appearances and pleas in court be developed by, for example, the use of a telephone, fax or other means of communication. Such methods may lighten dockets and minimize the inconvenience for Aboriginal accused persons and witnesses travelling to court only to be required to attend again at a later date. Our earlier suggestion that locally appointed Judges or Justices hear certain summary conviction offenses would help relieve the criminal courts of these administrative matters.

Although as yet relatively unused, diversion is perhaps the broadest method of allowing the community to deal with criminal conduct outside of the traditional prosecution route. The report of the 1988 Justice Reform Commission defines diversion as *"the name given to the programs which offer an alternative to prosecution under certain circumstances."*[5] The Young Offenders legislation provides for diversion schemes for young offenders. There is no equivalent legislation for adult offenders. However, even in the absence of such legislation, other provinces such as British Columbia employ diversion schemes for adults. Courts in Alberta also routinely perform a kind of informal diversion at various stages.

It is our view that some Aboriginal communities are interested in becoming more involved in assisting the police, courts and corrections in priorizing resources with respect to certain kinds of criminal conduct. They are also interested in establishing more traditional dispute resolution and healing techniques – approaches which may in certain circumstances be viewed by both the community and the accused person as more effective than mainstream prosecution for dealing with criminal conduct. Diversion has often meant a commitment on the part of the Crown to not prosecute if diversion is deemed appropriate. Still, we are aware that diversion has taken the form of deferred sentencing after prosecution or even deferred prosecution after charges are laid. In these circumstances, the accused person obtains referrals to community resources in the interim period. Once the community resources have been employed and progress is made toward dealing with the problem in a manner satisfactory to both the community and the accused person, the decision to continue the prosecution or the decision to impose a nominal sentence is made. It has been reported in British Columbia, for example, that when a decision is made at the outset to decline to prosecute, very few accused persons fail to abide by the terms of the diversion agreement. We have reviewed the written material related to the British Columbia Diversion Plan. We have heard from Crown Prosecutors and Judges in Alberta who currently employ the informal manner of diversion. Based on discussions with Aboriginal communities, it has become apparent to us that any form of diversion must happen with the support and involvement of the local Aboriginal community. The diversion must also have the support of the police, courts and service agencies involved. Without the support of the community, diversion will be seen as the accused person "getting off." No meaningful support or assistance will then be given by the community to the accused person to correct the conduct. Without the support of the police and the courts, it will be difficult to change traditional charging and prosecution patterns. Without the support of social agencies involved in assisting the community and the accused person to correct the conduct, assistance programs will not be developed or priorized, or these agencies will fail to make current programs available to the diversion process while choosing to continue to give priority to court-directed intervention.

For these reasons we suggest that the Government of Alberta consider a pilot diversion project involving representatives of the local Aboriginal community, the police, a representative of the local defence bar and appropriate social service agencies. This diversion committee would, at the request of the community, police, lawyers, Crown Prosecutors or accused persons themselves, review the circumstances surrounding a charge or proposed charge to determine whether some form of diversion or attempt at diversion is appropriate.

During our work as a Task Force, we have reviewed literature that suggests the alternative methods for dispute resolution may be more culturally appropriate to Aboriginal communities than the adversarial methods used by the mainstream criminal justice system. Currently, there is no impediment, other than lack of training and education, to any Aboriginal community wishing to establish community mediation and arbitration mechanisms to deal with disputes on reserves or in settlements with respect to land or band rights and including neighbour disputes, family related disagreements or other forms of conflict. We encourage communities to use this approach as either an alternative or a complement to the criminal justice system.

Although these alternate dispute resolution mechanisms may not be directly related to criminal conduct, they may serve to prevent criminal conduct. In certain circumstances, it may be appropriate for the diversion committee to refer an Aboriginal person accused of criminal conduct to community mediation or arbitration or to some other form of dispute resolution in the community before determining whether it is appropriate for the conduct to be dealt with through the criminal justice system proper. The Task Force has not had an opportunity to review alternative methods for the resolution of disputes in any depth or detail. However, it appears that the concept of relevant pilot projects in Aboriginal communities should be explored to determine the value of these programs as preventative and appropriate mechanisms for dealing with some forms of criminal conduct.

The Task Force Recommends:

11.2 That the government develop a more streamlined process for entering appearances and pleas in court, perhaps by using the telephone, fax, or some other means of communication.

11.3 That Aboriginal communities become more involved in assisting the police, courts, and corrections in priorizing resources and in using more traditional dispute resolution and healing techniques.

11.4 That the Government of Alberta consider a pilot diversion project involving representatives of the local Aboriginal community, the police, lawyers, Crown Prosecutors, and accused persons to review the circumstances surrounding a charge or proposed charge to determine whether some form of diversion or attempt at diversion is appropriate.

References

[1] The Indian Association of Alberta, "Submission to the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta," September, 1990. p8.

[2] The Lesser Slave Lake Indian Regional Council, "Submission to the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta," September 10, 1990, p8.

[3] The Indian Association of Alberta, "Submission to the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta," September, 1990.

[4] Canadian Bar Association (Alberta Branch), Native Law Subsection, "Submission to the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta," 1990.

[5] Justice Reform Commission, "Report," 1988.

12.0 Review of the Blood Tribe Inquiry Report

Term of Reference

Research 1(b)

to review recent reports respecting Indian and Metis people and the criminal justice system to determine to what extent the findings and recommendations of other reports apply to the Alberta situation including but not limited to

(i) ***"Justice Behind the Walls" (report of the Canadian Bar Association)***
(ii) ***"Locking Up Natives in Canada" (report of the Canadian Bar Association)***
(iii) ***"Aboriginal People in Federal Corrections" (report of the Solicitor General of Canada)***
(iv) ***"R.C.M.P. Review into Native Policing in Alberta and Across Canada"***
(v) ***"Human Rights Commission Report" (Canada, 1989)***

With the exception of the "Report of the Public Inquiry into Policing in Relation to the Blood Tribe," the Task Force has reviewed the above reports and included references and comments from those reports in the appropriate sections of our Report. Additionally, Volume III (Working Papers and Bibliography) of the Task Force's Report contains a review of the detailed recommendations of twenty-two major reports published since 1967 on Aboriginal people and the criminal justice system.

The Task Force was provided with an advance copy of the "Report of the Public Inquiry into Policing in Relation to the Blood Tribe," and has had the opportunity to review the text and recommendations of the report and to offer observations.

The Task Force necessarily recognizes considerable differences between its own structure, process and mandate, and those of the Public Inquiry, and how such differences could affect the content of the final reports. The Public Inquiry was guided by narrow terms of reference that were developed in response to specific problems identified by the Blood Tribe. The Task Force's terms of reference are much wider and cover the entire spectrum of the criminal justice system and its relationship to Aboriginal people. The Public Inquiry was conducted by a single commissioner over a period of nearly two years. The Task Force was comprised of seven members and completed its activities in fourteen months.

Using a detailed legalistic investigative process that called evidence under oath and in some cases under subpoena, the Public Inquiry focused on the treatment of Indian people by police in a limited geographic area. The Task Force used a wide ranging consultative process to study all aspects of the criminal justice system across the whole province of Alberta and its impact upon both Indian and Metis people. In contrast to the testimony heard by the Public Inquiry in its formal hearings, the Task Force travelled to various Aboriginal communities throughout the province and talked to Aboriginal people in their own environment about their perceptions of the criminal justice system.

To address and resolve the outstanding and sensitive issues that precipitated the Public Inquiry, the actual process of conducting the Inquiry is of primary importance. This is aptly demonstrated by the "Report of the Public Inquiry into Policing in Relation to the Blood Tribe" concerning the Cardston Blockade:

> *Ten years after the event, it is difficult to estimate the depth of damage inflicted on the trust relationship between Police and Natives. Hopefully a start has been made to restore the trust as a result of this Inquiry.*[1]

The Task Force's primary objective was to develop concrete recommendations that ensure that Aboriginal people receive fair, just and equitable treatment in all stages of the criminal justice process. The Task Force has made numerous detailed recommendations in an attempt to address the problems faced by Aboriginal people in the criminal justice system. The Public Inquiry made only a small number of general recommendations that basically reflected the status quo and readily accepted the existence and continuation of certain established institutions such as the Fatalities Inquiry Board which the Task Force notes has no Aboriginal participation.

The report of the Inquiry focuses on the recent relationship between the Blood Tribe and the Royal Canadian Mounted Police, and it makes only passing mention of the historical nature of that relationship. The lack of recognition of the significance of historical events such as land claim disputes, can lead to differences in the interpretations of more recent events - especially when those events are not perceived from the same historical perspective. With respect to the report of the Inquiry, it is interesting to note that the impact of existing established institutions and their effect upon historical dissatisfaction with the relationship between the Blood Tribe and the R.C.M.P. is not explored in depth.

The Public Inquiry, as required by its terms of reference, has produced a report that presents solutions pertaining to policing of the Blood Tribe. The Task Force has been required to undertake a fundamental evaluation of the criminal justice system and to provide a long-term perspective on the future direction of the system in Alberta as it relates to Aboriginal people. Part of the long-term perspective adopted by the Task Force is a commitment to community-based control of the criminal justice system. This perspective reflects the confidence with which the Task Force views the abilities of Aboriginal communities to assume greater control over the criminal justice process.

The report of the Public Inquiry acknowledges limited community control.

The report of the Public Inquiry and the report of the Task Force clearly differ on the issue of discrimination and racism. Although the report of the Public Inquiry recognizes the cultural insensitivity of some police members, the actions of the police are not attributed to racism or negative bias. The Report of the Public Inquiry states that:

> *The Commissioner of the Inquiry believes from the evidence before this Inquiry that there is no conscious bias or racial discrimination evidenced in the treatment of the Blood Indians by the Royal Canadian Mounted Police.*[2]

The Task Force acknowledges that Aboriginal people are victims of racism, discrimination and systemic discrimination, both from within the criminal justice system and from society at large, and its recommendations attempt to address this problem.

The Public Inquiry and the Task Force both acknowledge cultural insensitivity by people working in the criminal justice system. Both recommend Aboriginal-specific cultural awareness training for such people and education about Aboriginal people for the public at large. Also, the need for improved relationships and communication between the police and Aboriginal people is acknowledged. In addition, there is agreement on the need for clarification of federal, provincial and Aboriginal jurisdictional and funding responsibilities in the area of policing.

That Aboriginals are dissatisfied with the current level of policing service is acknowledged by both the Public Inquiry and the Task Force. For those Aboriginal communities with policing responsibilities the need to ensure the independence of the Police Commissions from the Band or Settlement government is also reiterated.

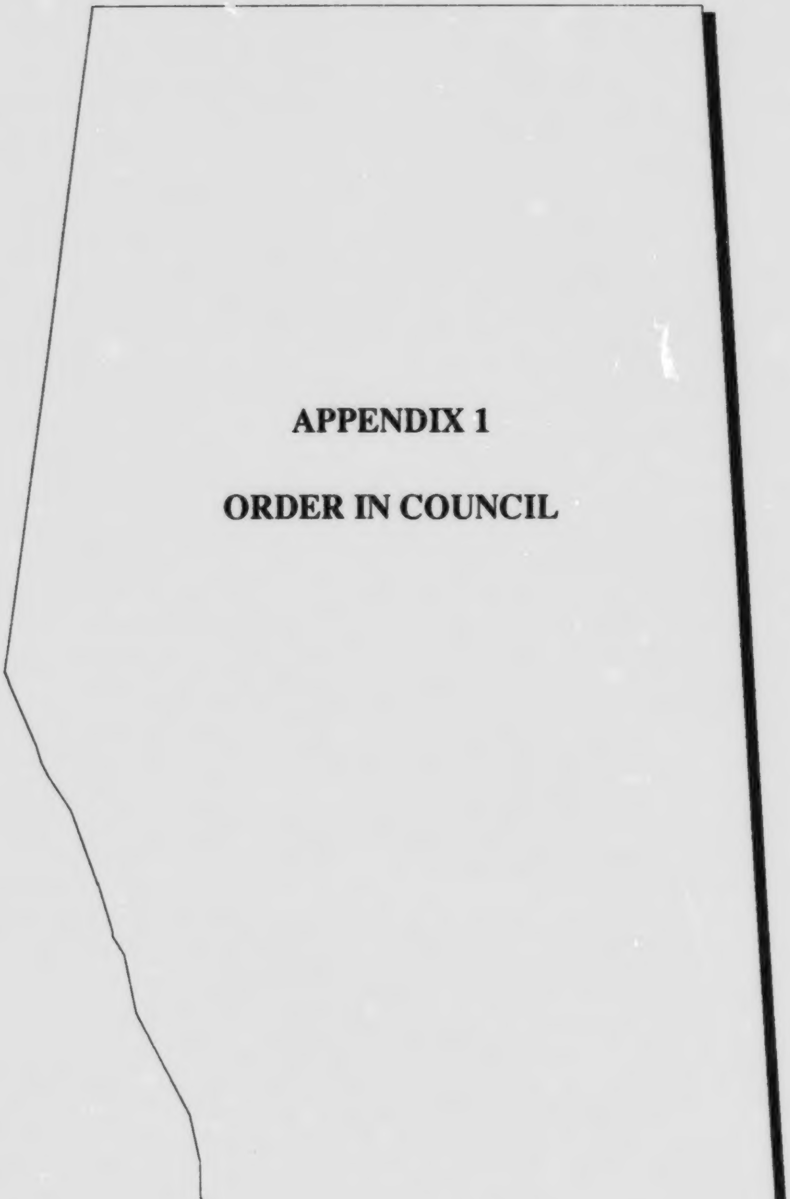
It is hoped that, in concert, the Report of the Public Inquiry and the Report of the Task Force will improve the relationship between the Aboriginal people of Alberta and the criminal justice system of the province.

References

[1] Report of the Public Inquiry into Policing in Relation to the Blood Tribe, p126.

[2] *Ibid.* p178.

13.0 Appendices



APPENDIX 1

ORDER IN COUNCIL

Alberta
ORDER IN COUNCIL

APPROVED AND ORDERED,

W. Helen Hunley
LIEUTENANT GOVERNOR

O.C. 20/90

January 11, 1990

EDMONTON, ALBERTA

WHEREAS the Government of Alberta and the Government of Canada wish to work with each other and with the Indian and Metis people of Alberta and their leaders and organizations to examine the criminal justice system as it relates to the Indian and Metis people in Alberta;

THEREFORE, upon the recommendation of the Honourable the Attorney General and the Honourable the Solicitor General, the Lieutenant Governor in Council establishes the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta as follows:

(a) the following are appointed as members of the Task Force:

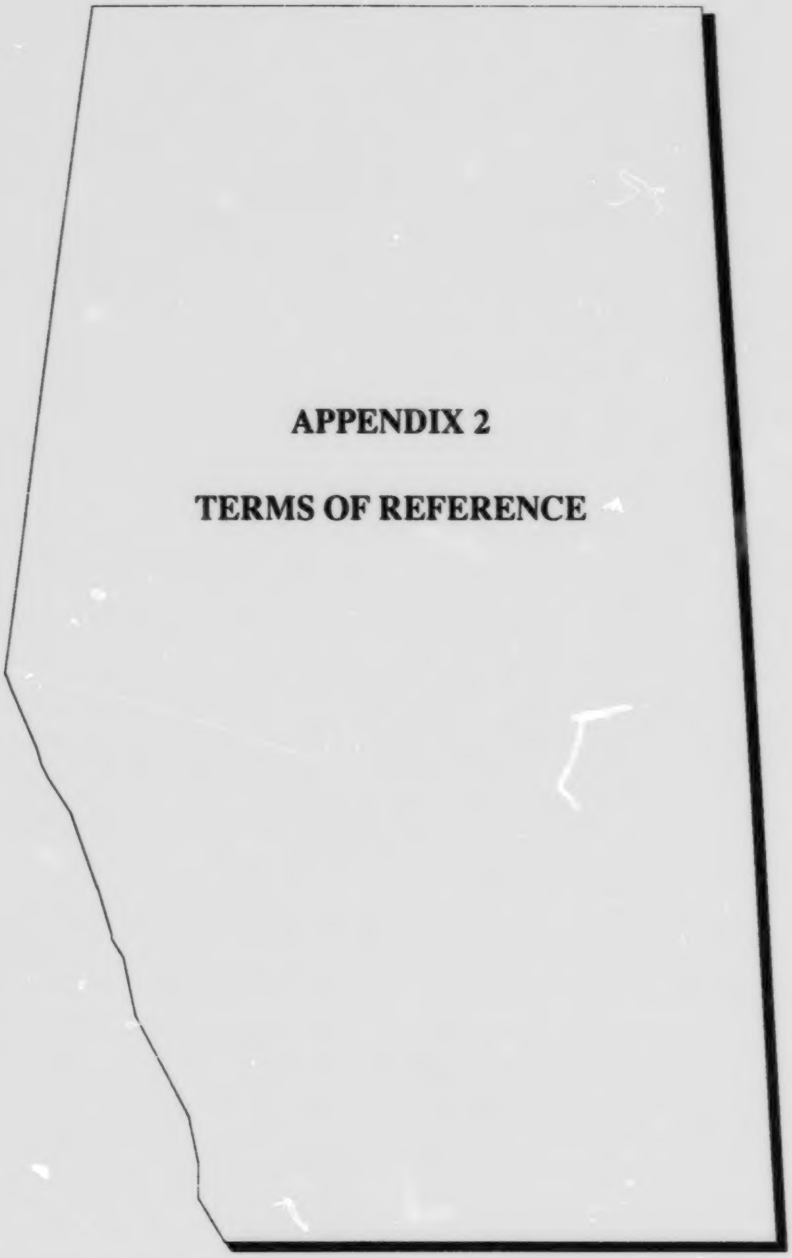
Honourable Mr. Justice Robert Allan Cawsey, Chairman
Mr. Leroy Littlebear
Ms. Cynthia Bertolin
Superintendent Cleve Cooper
Ms. Janet Franklin
Mr. Arnold Galet
Mr. Michael Gallagher

(b) the Chairman is responsible for calling and presiding at meetings of the Task Force, deciding when and where meetings of the Task Force will be held, determining the assignment of tasks to individual members, determining the submissions that the Task Force will receive and generally coordinating the activities of the Task Force;

(c) the terms of reference of the Task Force shall be in accordance with the Appendix;

(d) the Task Force shall submit a final report to the Attorney General of Alberta, the Solicitor General of Alberta and the Solicitor General of Canada on or before December 31, 1990.

Don R. Getty
CHAIRMAN



APPENDIX 2

TERMS OF REFERENCE

APPENDIX 2

TERMS OF REFERENCE
TASK FORCE ON THE CRIMINAL JUSTICE SYSTEM AND ITS IMPACT ON THE INDIAN AND METIS PEOPLE OF ALBERTA

A. GENERAL OBJECTIVE

The overall objective of the Task Force is to complete a review of the criminal justice system in Alberta as it relates to Indian and Metis people and to provide a report for the Solicitor General of Canada, the Attorney General and the Solicitor General of Alberta, which identifies any problems and proposes solutions to ensure the Indian and Metis people receive fair, just and equitable treatment at all stages of the criminal justice process in Alberta.

B. SCOPE

1. The Task Force has the following responsibilities:
    a) to examine the criminal justice system in Alberta as it affects Indian and Metis people, in urban, rural, reserve and isolated settings with consideration to be given to any ways in which the system affects men and women differently;
    b) to identify the areas, if any, and consider the extent to which Indian and Metis people are treated differently from non-Indian and non-Metis people by the criminal justice system and to assess whether that different treatment is desirable or detrimental;
    c) to identify areas where, and the extent to which, Indian and Metis people should be treated differently from non-Indian and non-Metis people within the present criminal justice system;
    d) to consider alternative methods of dealing with Indian and Metis people involved with the criminal justice system that take into account Indian and Metis cultures, languages and special needs, and to recommend changes that can be equitably and readily achieved to the existing system that take into account culture, languages and special needs of Indian and Metis people, particularly Indian and Metis youth.
2. Any recommendations made by the Task Force will have regard for the present constitutional and legal framework in Canada and Alberta.

C. CONSULTATIONS

1. The Task Force will visit various locations in the Province to receive representations and submissions from interested Indian and Metis groups, organizations and associations.
2. These consultations are subject to the following terms and conditions:

a) any group, organization or association wishing to make representations to the Task Force will normally be required to first submit a written brief, although the Task Force may receive oral presentations where there are extenuating circumstances;

b) only groups, organizations and associations or individuals representing groups, organizations or associations may make representations to the Task Force;

c) individuals, groups, organizations and associations making representations to the Task Force and to defend their representations accordingly.

3. The Task Force may develop and disseminate the information it considers necessary to ensure that those interested in making representations are informed of the establishment of the Task Force and of the objective, scope and content of the examination in which it is engaged.

4. The Task Force may invite representations from particular groups, organizations and associations whose participation is viewed by the Task Force as necessary or desirable because of their role in the delivery of criminal justice services.

D. AREAS OF EXAMINATION

The purview of each area of examination is as follows:

1. Research

a) to review the findings and recommendations of Report #4 of the Kirby Board of Review to assess

   i) the extent to which the findings are still applicable,
   ii) the extent to which the recommendations were implemented, and,
   iii) the effect that the recommendations that were implemented have had on the Indian and Metis people involved with the criminal justice system in Alberta;

b) to review recent reports respecting Indian and Metis people and the criminal justice system to determine to what extent the findings and recommendations of other reports apply to the Alberta situation including but not limited to

   i) "Justice Behind the Walls" (report of the Canadian Bar Association),
   ii) "Locking Up Natives in Canada" (report of the Canadian Bar Association),
   iii) "Aboriginal Peoples in Federal Corrections" (report of the Solicitor General of Canada),
   iv) "R.C.M.P. Review into Native Policing in Alberta and Across Canada",
   v) "Commission of Inquiry into Policing in Relation of the Blood Tribe", and,
   vi) "Human Rights Commission Report" (Canada, 1989);

c) to review projects and programs implemented in other jurisdictions designed to address the needs and concerns of the Indian and Metis people involved in the criminal justice system.

2. Policing

a) to review the delivery of policing services to Indian and Metis communities and more specifically, regarding identifiable Indian and Metis communities, the Task Force will

   i) examine the existing relationship between members of the Indian and Metis communities and the R.C.M.P.,
   ii) examine the existing lines of communication between the R.C.M.P. and municipal police forces and Indian and Metis leaders to determine if existing police practices are responsive to Indian and Metis concerns, in particular the degree of Indian and Metis input into the identification of enforcement problems and the development of solutions.
   iii) examine the existing level of police service in the Indian and Metis communities, the working relationships between the R.C.M.P. personnel and band special constables, and the effectiveness of special programs such as crime prevention initiatives and other forms of police/community involvement, and
   iv) review the impact of the R.C.M.P. Special Constable program in relation to the original objectives of the program in light of current needs;

b) as it relates to Indian and Metis people in urban, rural and isolated settings, to review existing relationships between Indian and Metis people and municipal police forces and the R.C.M.P.;

c) to review and assess the current recruit training and other in-service training programs of the R.C.M.P. and municipal police forces insofar as this training relates to Indian and Metis culture awareness and understanding;

d) to review and assess the recruitment and selection programs of the R.C.M.P. and municipal police forces that are designed to attract Indian and Metis people into the respective police forces;

e) to review the operational policies and practices of the R.C.M.P. and municipal police forces as they relate to the exercise of police powers as between Indian and Metis people and non-Indian and non- Metis people to determine if there are differences in treatment and whether those differences are desirable or detrimental.

3. Legal Aid

a) to determine the extent to which Indian and Metis people involved with the criminal justice system are aware of the availability of legal aid, how to obtain legal aid and the extent to which legal aid is presently provided following arrest, when appearing before a Justice of the Peace, or when first appearing in Court;

b) to identify the deficiencies that exist between the present system of legal aid respecting the needs of Indian and Metis people involved with the criminal justice system, and to determine how these deficiencies can be effectively addressed.

4. **Courts**

   a) to examine the extent to which Indian and Metis people currently experience difficulty when appearing in Court as a result of their unique languages and cultures;

   b) to determine whether and to what extent differences exist in sentencing practices as between Indian and Metis people and non-Indian and non-Metis people;

   c) to examine existing levels of community input and to assess the feasibility of permitting a greater degree of participation by knowledgeable and respected Indian and Metis people in the sentencing process;

   d) to assess the desirability and the extent to which Court sittings should be routinely and/or selectively held in identifiable Indian and Metis communities;

   e) to determine whether alternatives to imprisonment that may be available to non-Indian and non-Metis people are also available to Indian and Metis people and whether there are any barriers to their having access to those programs;

   f) to determine to what extent Indian and Metis people appearing in a court are presently provided with interpreters/translators and to determine if there are tangible benefits to permitting Indian and Metis people to use their own language in the courts;

   g) to examine whether and the extent to which differences exist in the provision of bail, release on own recognizance or other forms of conditional release prior to trial or adjudication between Indian and Metis people and non-Indian and non-Metis people;

   h) to determine the extent to which Indian and Metis people are imprisoned due specifically to their inability to pay a fine or use a fine option program.

5. **Prosecution**

   to determine whether and the extent to which differences exist in the exercise of prosecutorial discretion between Indian and Metis people and non-Indian and non-Metis people.

6. **Corrections**

   a) to examine the current admission rates/numbers, incarceration rates/numbers, average sentence and average length of time served in prison by Indian and Metis people in comparison to non-Indian and non-Metis people;

   b) to examine existing policies and practices to determine whether there are any discrepancies between Indian and Metis and non-Indian and non-Metis people respecting

      i) prisoner classification, case management techniques, release criteria and the availability of programs to Indian and Metis people while in custody, and

      ii) the criteria for entry to community release programs and the rate of early release of Indian and Metis people;

c) to review existing correctional centre programs for both men and women to determine

  i) the nature and content of programs for both young offenders and adult offenders,

  ii) whether there is sufficient attention being given to the general needs and concerns Indian and Metis people including educational, personal development, drug and alcohol abuse and other programs of importance to the Indian and Metis people who are seeking to become more productive on release from prison, and

  iii) whether there is sufficient attention being given to the special needs and concerns of Indian and Metis people in view of their cultural and spiritual heritage;

d) to determine the extent to which Indian and Metis elders and other respected Indian and Metis leaders, organizations and associations are presently involved in program development and delivery and in providing advice to senior correctional officials, and to determine how Indian and Metis people can become more involved in the correctional system in a productive and positive manner;

e) to examine the level of interest in Indian and Metis communities and among Indian and Metis leaders and organizations in taking on a more active role in the delivery of community based correctional programs and crime prevention initiatives.

7. Native Counselling Services of Alberta

a) to examine the effectiveness of the working relationships between Native Counselling Services of Alberta (NCSA) and the police community, the courts, the correctional systems (both Federal and Provincial), the Indian and Metis communities and individuals and the Indian and Metis leadership, organizations and associations;

b) to identify, to the extent possible, methods of improving services through the NCSA or through other organizations or service delivery options.

8. Other

a) to identify and describe other areas of concern that contribute directly to Indian and Metis people becoming involved in the criminal justice system in the first instance, and to recommend other steps that can be taken to more effectively address those areas of concern;

b) to identify areas of jurisdictional interaction or overlap between the Federal and Provincial Governments that tend to impede actions and decisions within the corrections system to the detriment of Indian and Metis offenders;

c) to determine how the various departments of the Government of Alberta that provide services to Indian and Metis people can more effectively coordinate various services and programs to the benefit of the Indian and Metis people in such a manner as to reduce the number of Indian and Metis people coming into contact with the criminal justice system;

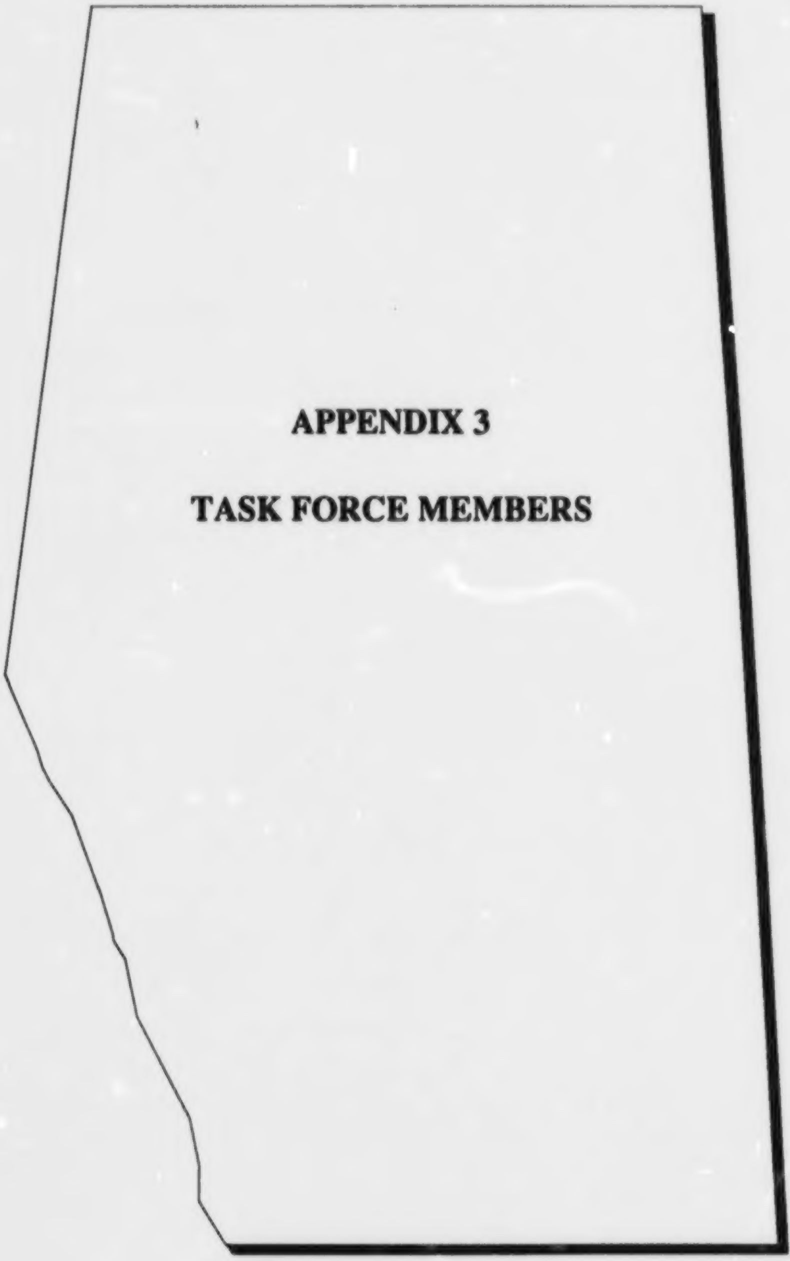
d) to review the cross cultural training provided to the judiciary, crown prosecutors, legal aid personnel and correctional personnel to determine if existing training is adequate and to make any recommendations necessary to ensure the development of comprehensive and effective programs;

e) to determine to what extent Indian and Metis people are presently employed in the various components of the criminal justice system in Alberta and to propose policy changes that would result in a higher level of employment;

f) to identify areas of concern as they relate to the special needs of Indian and Metis youth and women as they are affected by the areas under review.

9. Ongoing Process

to formulate a process for the ongoing monitoring and upgrading of programs and initiatives implemented pursuant to the recommendations of the Task Force.



APPENDIX 3

TASK FORCE MEMBERS

APPENDIX 3

TASK FORCE MEMBERS

Honourable Mr. Justice Robert Allan Cawsey, Chairman

Justice Allan Cawsey is a Justice in the Court of Queen's Bench of Alberta. Justice Cawsey served one year in the R.C.M.P. in 1941, followed by service in the Canadian Army. He graduated with a Bachelor of Laws Degree from the University of Alberta in 1951 and served in private practice and as a Crown Prosecutor until 1972, when he was appointed to the Provincial Court of Alberta - Wetaskiwin Circuit. He was appointed Chief Judge, Provincial Court of Alberta in 1976 and a Justice in the Court of Queen's Bench in 1979.

Leroy Little Bear, Member

Leroy Little Bear is an associate professor in the Native American Studies Department of the University of Lethbridge. He helped to establish the department in 1975, having served since that time as its chairman and an instructor. He also has served as a consultant to a number of organizations, including the Indian Association of Alberta, Blood Indian Tribe, Department of Indian Affairs and Northern Development, and the national Indian Brotherhood. Mr. Little Bear, fluent in the Blackfoot language, is a member of the Indian Association of Alberta, University of Lethbridge Faculty Association, and Indigenous Bar Association.

Cynthia Bertolin, Member

Cynthia Bertolin is articling with the Edmonton law firm, Biamonte Cairo & Shortreed and anticipates being called to the Alberta Bar in 1991. Ms. Bertolin has served in a number of capacities with the Metis Association of Alberta, including President of an Association Local, Policy Development Co-ordinator, and consultant to the Association and its affiliates. She is a member of the Canadian Bar Association, the Commission on Folk Law and Legal Pluralism, the Indigenous Bar Association and the Metis Association of Alberta.

Chief Superintendent Cleve Cooper, Member

Chief Superintendent Cooper is the R.C.M.P. Co-ordinator for the Policing Inquiry, Blood Tribe. He joined the R.C.M.P. in 1960, and has served in British Columbia, Northwest Territories, Yukon Territory, Ontario, Manitoba and Alberta. He was commissioned as an Inspector in 1976. In September 1977 he was transferred to "D" Division, Winnipeg as the Assistant Officer in Charge, Commercial Crime Section. Superintendent Cooper was appointed Officer in Charge, Edmonton Commercial Crime Branch in 1987 before assuming his current position.

Janet Franklin, Member

Janet Franklin is a practising partner in the Edmonton law firm of Ackroyd, Piasta, Roth and Day. From 1974 to 1979 she worked extensively in the area of criminal law as a prosecutor in the Criminal Justice Division of the Alberta Department of the Attorney General. She joined the City of Edmonton Legal Department in 1979, where she practised in the areas of civil litigation, administrative law and labour. She joined Ackroyd, Piasta, Roth and Day in 1981 and became a partner in 1984. She is a member of the Board of Directors of the Victorian Order of Nurses, and the Labour Law Subsection of the Canadian Bar Association.

Arnold Galet, Member

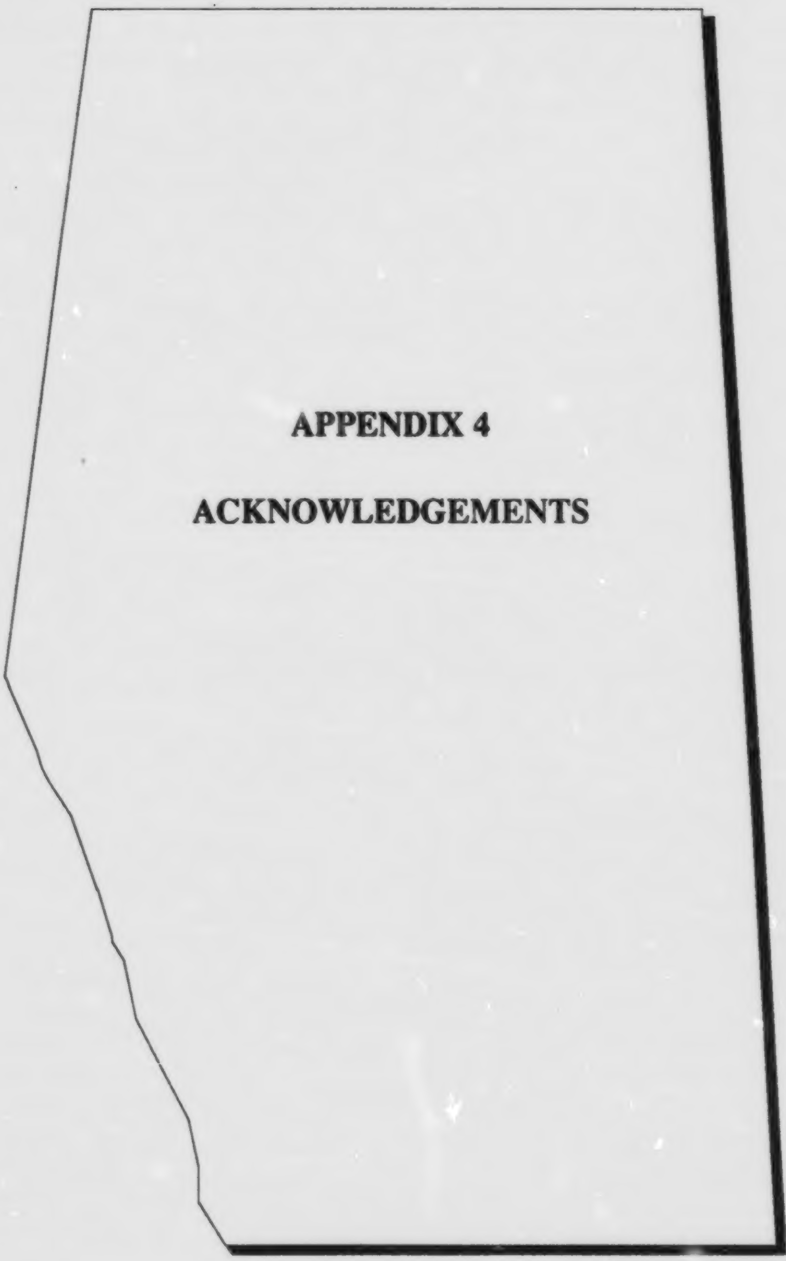
Arnold Galet is the Executive Director of the Young Offender Branch, Correctional Services Division, Alberta Solicitor General. He began his career in Provincial corrections in 1973 and has worked in both community and institutional corrections. He has served as Assistant Director of Community Corrections, Deputy Director and Director of the Belmont Correctional Centre. He continued to hold progressively responsible positions in senior and executive management, including Regional Director of the province's north region of correctional services. He assumed his current position in 1989.

Michael Gallagher, Member

Michael Gallagher, Warden of the Edmonton Institution, has served since 1972 with Correctional Service Canada. He began his career in Federal corrections as a psychologist at the Drumheller Institution. In 1975 he was appointed Regional Coordinator of Living Units, based in Saskatoon, Saskatchewan. Mr. Gallagher later served as Executive Director of the Regional Psychiatric Centre before being appointed Regional Manager Planning and Administration in 1979 and Warden of Bowden Institution in 1984. He assumed his current position in 1987.

APPENDIX 4

ACKNOWLEDGEMENTS



APPENDIX 4

ACKNOWLEDGEMENTS

The Task Force would like to make a special mention of the following groups or individuals whose efforts greatly assisted the Task Force in its work:

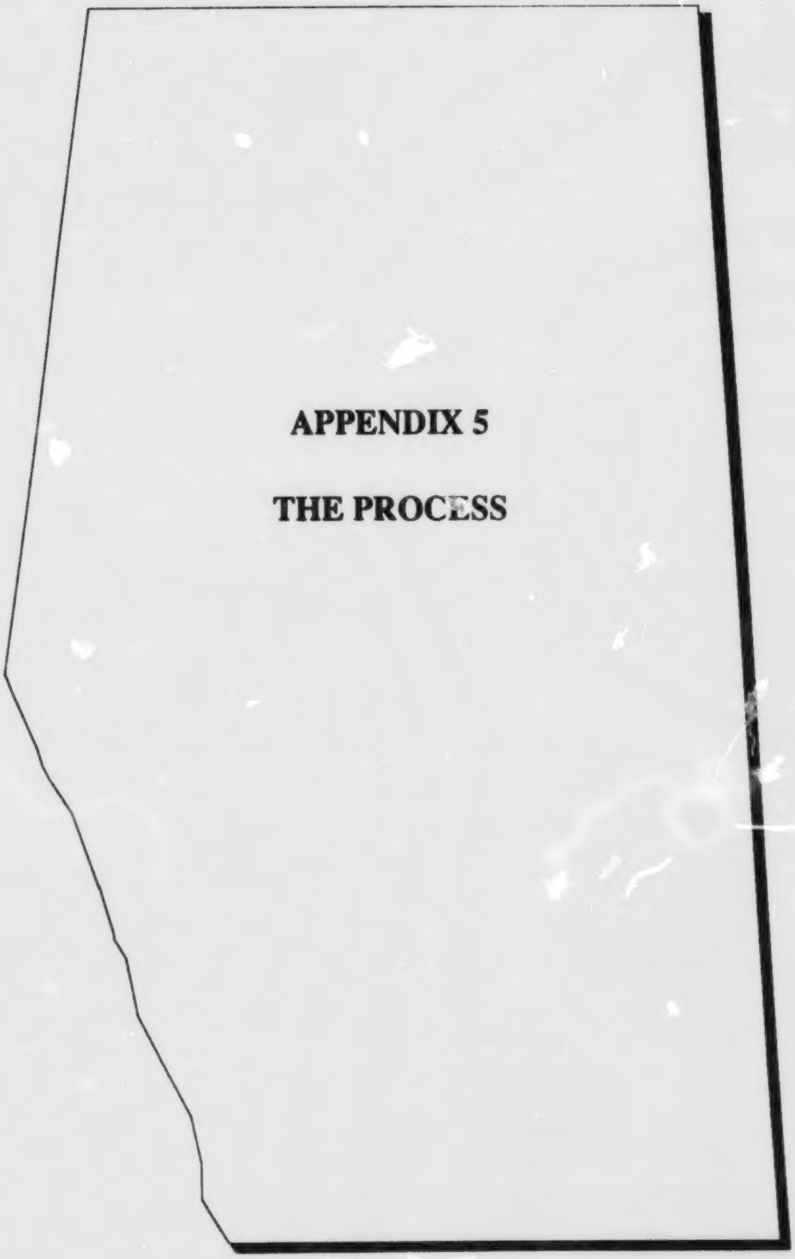
- Mr. Jack Davis, Deputy Solicitor General, Government of Alberta.
- Mr. Neil McCrank, Deputy Attorney General, Government of Alberta.
- Mr. Greg Fyffe, Assistant Deputy Solicitor General, Government of Canada.
- G. J. Greig, Assistant Commissioner, Commanding Officer, "K" Division, Royal Canadian Mounted Police.
- Humanité Services Planning Ltd. for invaluable assistance with the preparation and compilation of the Task Force Report.
- Mr. Roy Louis, former President, Indian Association of Alberta.
- Mr. Larry Desmeules, President, Metis Association of Alberta.
- Sergeant R.G. (Ray) Ambler, "K" Division, Royal Canadian Mounted Police.
- Mr. Bob King, former Deputy Solicitor General, Government of Alberta.
- The staff of Native Counselling Services of Alberta for their assistance in arranging meetings with various Indian and Metis groups.
- M. J. Duggan, Deputy Commissioner, The Correctional Service of Canada, Prairie Region.
- Norm Fagnou, Regional Director, National Parole Board, Prairie Region.
- Hank O'Handley, Assistant Deputy Minister, Correctional Services Division, Department of the Solicitor General, Government of Alberta.
- The many individuals who wrote to the Task Force to express their views on and concerns with the Criminal Justice System.
- Those who met with the Task Force during its travels around the Province and who provided the Task Force with valuable insights into the problems encountered by the Indian and Metis peoples in dealing with the Criminal Justice System.

Acknowledgements must be given to the following people for their assistance in the collection and analysis of statistical and program data:

- Mr. Michael Martin (and previously Mr. Bruce Andrais) of the Correctional Services Division, Alberta Department of the Solicitor General.
- Mr. Wayne Wilson, Law Enforcement Division, Alberta Department of the Solicitor General.
- Mr. Steve Koval, Alberta Department of the Attorney General.
- Mr. Hamblyn Beharry, Alberta Department of Municipal Affairs. - Mr. John McDonough, Alberta Department of Health.
- Mr. Merv Kowalchuk, Native Education Project, Alberta Department of Education.
- Mr. Clement Laframboise, Indian and Northern Affairs Canada, Alberta Region.
- Ms. Joanne Severn, Correctional Services Canada, Prairie Region. - Mr. Len Mieir, National Parole Board, Prairie Region.
- Sergeant Mark Logar, Edmonton City Police
- Mrs. Eunice Cutting, Senior Librarian, Alberta Department of Solicitor General. - Mrs. Wanda Fish, Legal Aid Society.
- Mr. Lothar Goetz, Canadian Centre for Justice Statistics, Statistics Canada, Ottawa.

and last, but by no means least, many thanks must be given to the two research consultants contracted by the Task Force:

- Retired Superintendent Sheldon Kelly for his work on the collection of the Police data.
- Mrs. Marianne Nielsen for her work on many of the Task Force's research projects.



APPENDIX 5

THE PROCESS

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THE PROCESS

A. CONSULTATION

Immediately after being formed, the Task Force wrote to over four hundred individuals, organizations and associations providing them with a copy of the Task Force Terms of Reference and inviting them to make a submission to the Task Force.

The invitation was extended to all the Chiefs in Alberta, all Metis Settlements and isolated community Associations, various Indian and Metis business groups and communications networks, Friendship Centres, Tribal/Regional Councils and Indian and Metis groups. Members of the Legislative Assembly were also invited to make submissions. In addition, invitations were sent to groups such as the Elizabeth Fry Society, John Howard Society, Canadian Bar Association, Alcohol and Drug Treatment Centres, the Criminal Trial Lawyers Association, the Ombudsman, the Human Rights Commission, the Salvation Army, the Native Council of Canada (Alberta), the Assembly of First Nations, Alberta Women's Secretariat and various religious organizations.

A newspaper advertisement was placed in all the Alberta daily and weekly newspapers and newspapers serving Indian and Metis communities. The advertisement provided information on the Task Force and invited interested parties to contact the Task Force for further information and assistance in presenting submissions.

The Task Force visited every Federal and Provincial correctional facility in the Province. During the course of these visits the Task Force met with the Native Brotherhood or with Indian and Metis inmates at each of the facilities.

Information seminars were held with Provincial Government Departments, Provincial Court Judges, the Indigenous Bar Association, the Department of Indian and Northern Affairs and Crown Prosecutors. Meetings were held with local service providers in each of the communities visited by the Task Force and involved Native Counselling, the R.C.M.P., Family and Social Services, the Alberta Alcohol and Drug Abuse Commission, and Community Corrections, among others.

Visits were made to the Poundmaker's Lodge Treatment Centre, the Boyle Street Co-op and the Edmonton Operation Friendship Centre. The Task Force visited the Royal Canadian Mounted Police Training Academy in Regina to observe the cross- cultural training program provided at the Academy.

Some members of the Task Force participated in the Edmonton Police Services "ride-along" program. Several members of the Task Force made visits to local Courts and Circuit Courts to observe the process.

B. FUNDING

Funding was made available to the Indian Association of Alberta and the Metis Association of Alberta to assist with the preparation and presentation of briefs.

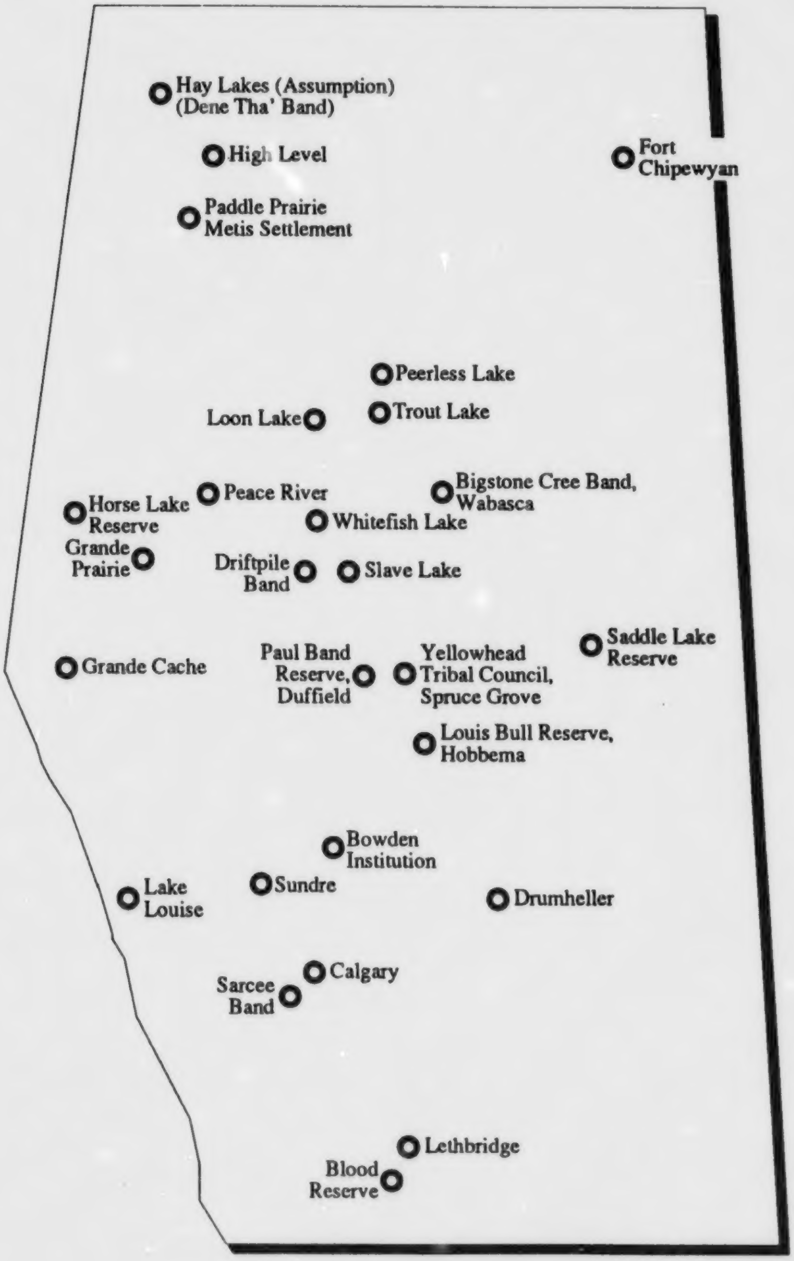
Individual Bands, Tribes and Metis Settlements were also eligible for funding. Funding was provided as follows:

Alberta Federation of Metis Settlements Association	$12,792.00
Alexander Tribal Government	1,500.00
Blood Tribe Administration	7,500.00
Indian Association of Alberta	157,123.00
Metis Association of Alberta	100,000.00
Native Counselling Services of Alberta	23,877.00
Neeyanan Association	3,000.00
Poundmaker's Lodge	10,000.00
Sarcee Nation Administration	2,500.00
Slave Lake Indian Regional Council	14,669.00
Sunchild Cree Band	1,500.00
Yellowhead Tribal Council	1,500.00

C. VISITS

Beginning in March 1990, the Task Force visited a number of Reserves and one Metis Settlement in the Province. These visits were made at the invitation of the local communities and usually involved the presentation of a submission to the Task Force.

The communities visited are shown on the map following:


Hay Lakes (Assumption) (Dene Tha' Band)
High Level
Fort Chipewyan
Paddle Prairie Metis Settlement
Peerless Lake
Loon Lake
Trout Lake
Bigstone Cree Band, Wabasca
Peace River
Horse Lake Reserve
Whitefish Lake
Grande Prairie
Driftpile Band
Slave Lake
Saddle Lake Reserve
Grande Cache
Paul Band Reserve, Duffield
Yellowhead Tribal Council, Spruce Grove
Louis Bull Reserve, Hobbema
Bowden Institution
Lake Louise
Sundre
Drumheller
Calgary
Sarcee Band
Lethbridge
Blood Reserve

D. RESEARCH

The Research activities of the Task Force were limited to three main areas: a Literature search and review; data collection; and data analysis. It was recognized from the outset that the complexity of the Task Force's area of study and the deadline for reporting would not permit any 'original' research to be conducted, but rather, would involve a review and analysis of existing literature and data.

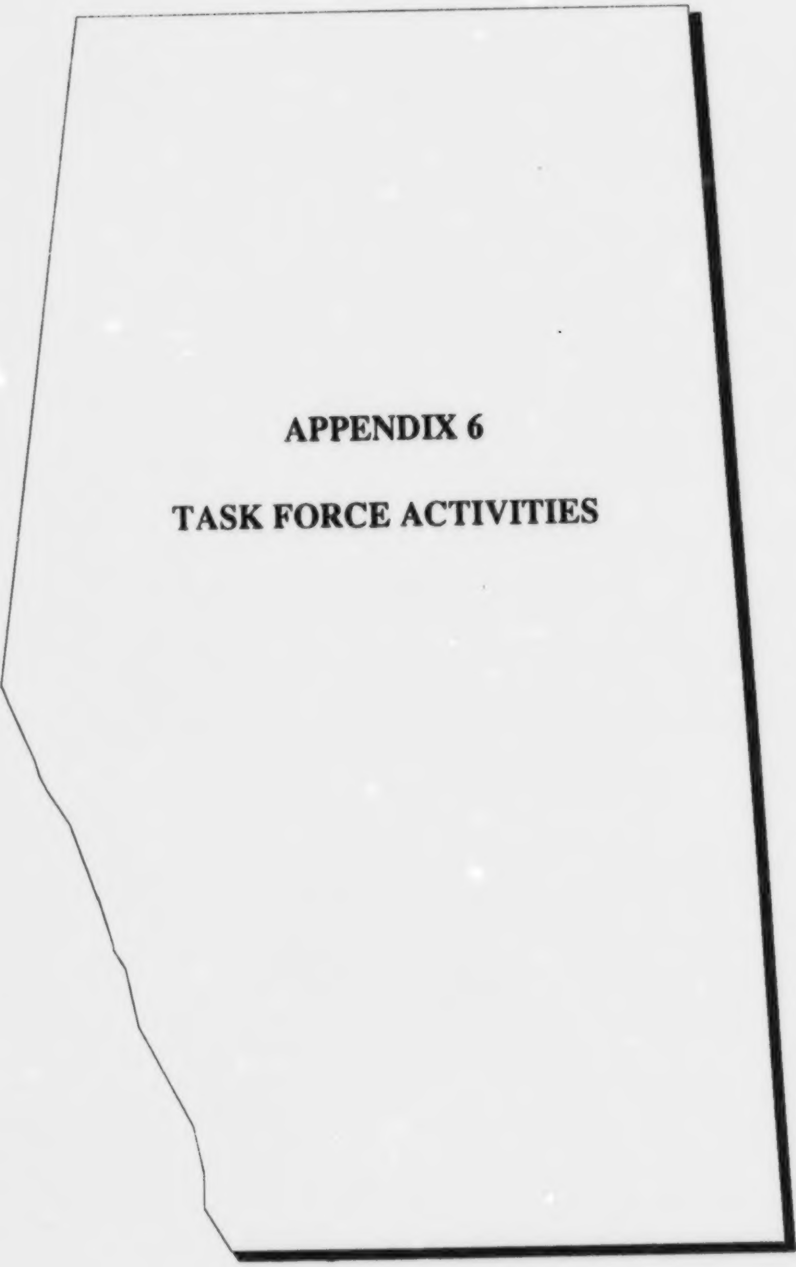
It very quickly became apparent that an overwhelming amount of literature existed respecting Aboriginal people and the Criminal Justice System. Consequently, the literature search was initially limited to generally acknowledged major National and Provincial studies from the 1960's onwards, together with all significant publications from the mid-1980's onwards - of which there were a large number. Further, studies were acquired for the Task Force on request and as a result of their initial literature review. In addition to the review undertaken by the Task Force, the Research staff of the Task Force prepared a written summary and review of twenty-two major reports published since the 1960's.

Statistical, policy and program data were collected from Government Departments and other organizations involved in service delivery in the Criminal Justice System. In order to allow these organizations and Departments sufficient time to extract the required statistical data from their automated and manual data collection systems, the detailed requests for information were developed from the Terms of Reference and sent to these agencies in the second month of the Task Force's term of office. Most of the required statistical policy and program data had been received in the Task Force office by the middle of the Task Force's term. This permitted an analysis of the data to be undertaken while the Task Force was still visiting Indian and Metis communities throughout the Province and hearing public presentations. Most of the data provided by the Government Departments and other agencies were in aggregated tabular form and required little further computer analysis.

The Statistical Report, which included an extensive use of graphics for ease of public consumption, was completed for consideration during the last phase of the Task Force's activities, namely the development and consolidation of recommendations and the drafting of the Final Report.

In addition to the major activities, ad hoc requests for information from Task Force members were completed by Research staff throughout the life of the Task Force.

The detailed statistical analysis was completed not only to aid Task Force members in the identification of problems and formulation of recommendations, but also to provide a detailed statistical description of the Criminal Justice System in Alberta, which could act as a base for the monitoring of the implementation of recommendations and as comparative base for any future studies.



APPENDIX 6

TASK FORCE ACTIVITIES

APPENDIX 6

TASK FORCE ACTIVITIES

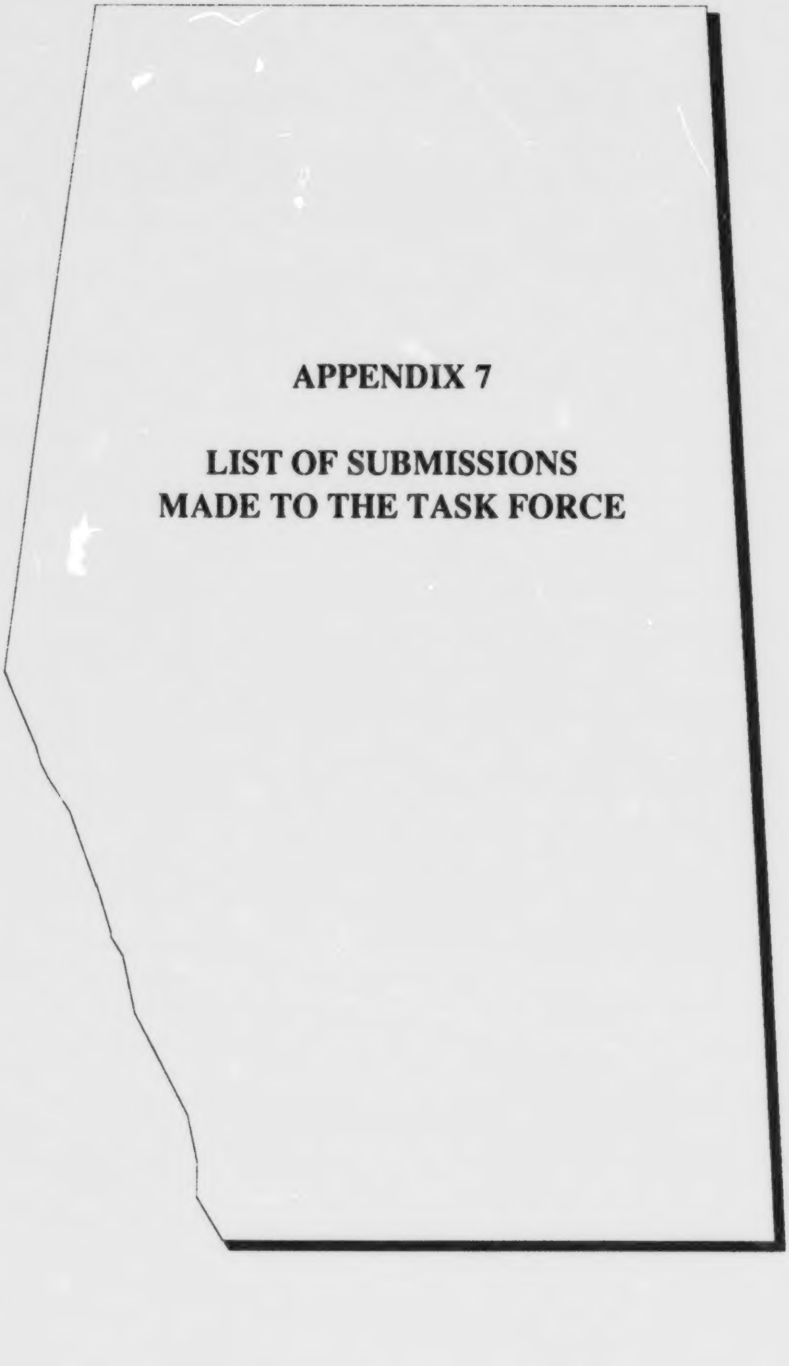
January 8, 1990	First meeting of Task Force
January 12, 1990	Task Force formally announced by Governments of Canada and Alberta.
February 1 and 2, 1990	Orientation Session for Task Force members with presentations from the Royal Canadian Mounted Police, Crown Prosecutors, Legal Aid, Native Counselling Services of Alberta, Chief Provincial Court Judge, Community Corrections, Provincial and Federal Corrections, the National Parole Board, the Indian Association of Alberta and Dr. Anne Anderson, President, Native Heritage and Cultural Centre.
February 9, 1990	Visit to the Edmonton Institution and meeting with Native Brotherhood. Visit to Fort Saskatchewan Correctional Centre.
February 23, 1990	Visit to Edmonton Remand Centre. Meeting with Assistant Chief Judge Walder White, Family and Youth Court. Visit to the Edmonton Young Offender's Centre.
March 9, 1990	Meeting with Assistant Commissioner Robert H.D. Head, Royal Canadian Mounted Police.
March 13, 1990	Meeting with Louis Bull Police at Louis Bull Reserve.
March 16, 1990	Task Force meeting.
March 21, 1990	Visit to Fort Saskatchewan Correctional Centre for meeting with Native Brotherhood. Visit to Poundmaker's Lodge.
April 3, 1990	Steering Committee meeting.
April 4, 1990	Visit to Calgary Correctional Centre and meeting with Native inmates. Meeting with Chief and Council members, Sarcee Band, Calgary.
April 9, 1990	Information Sharing Seminar with various Provincial Government Departments.
April 11, 1990	Visit to Boyle Street Co-op, Edmonton. Visit to Operation Friendship premises, Edmonton.

April 17, 1990	Visit to Paddle Prairie Metis Settlement. Meeting with community residents. Meeting with local service providers in High Level.
April 18, 1990	Visit to Dene Tha' Band, Assumption. Meeting with Chief and Council members. Town Hall meeting with community members.
April 19, 1990	Meeting with representatives of the Meander River community in High Level. Meeting with representatives of Tallcree Band in High Level.
April 20, 1990	Meeting with Chief, Boyer River Band in High Level.
May 3, 1990	Meeting with representatives of the Yellowhead Tribal Council.
May 9, 1990	Visit to Paul Band Reserve, Duffield.
May 10, 1990	Visit to Drumheller Institution and meeting with Native Brotherhood.
May 12, 13, 14, and 15, 1990	Western Judicial Centre Conference, Lake Louise, Alberta.
May 17, 1990	Task Force Meeting.
May 23, 1990	Visit to Saddle Lake Reserve and meeting with Chief and Council.
May 24, 1990	Information Seminar with Provincial Court Judges, Justices of the Peace and Hearing Officers, Indigenous Bar Association and Indian and Northern Affairs, Canada.
May 29, 1990	Meeting with Native Affairs Caucus Committee, Government of Alberta.
May 29, 30, 31, June 1, 1990	R.C.M.P. Conference "Sharing Common Ground", Edmonton.
June 3, 1990	Visit to Grande Cache Correctional Centre and meeting with Native inmates.
June 5, 1990	Visit to Peerless Lake and meeting with Neeyanan Association. Visit to Trout Lake and meeting with community members.
June 6, 1990	Visit to Loon Lake and meeting with community members.
June 11, 1990	Steering Committee meeting.

June 12, 1990	Meeting in Fort Chipewyan with Reeve of Fort Chipewyan and representatives of the Chipewyan Band, the Cree Band and the Metis Local. Town Hall style meeting in Fort Chipewyan with community members.
June 13, 1990	Meeting with local service providers, Fort Chipewyan.
June 18, 19 and 20, 1990	Visit to the Royal Canadian Mounted Police Training Academy in Regina, Saskatchewan to observe cross-cultural training program.
June 26, 1990	Visit to the Driftpile Band and meeting with Chief and Council.
June 27, 1990	Meeting with local service providers, Slave Lake. Visit to Whitefish Lake Band, meeting with community members and meeting with representatives of the Gift Lake Metis Settlement. Meeting with Bigstone Cree Band, Wabasca.
July 10, 1990	Oral presentation. Native Brotherhood, Edmonton Institution. Visit to Grierson Correctional Centre.
July 11, 1990	Visit to Bowden Institution and meeting with Native Brotherhood. Observation of meeting of National Parole Board held at Bowden Institution.
July 26, 1990	Task Force meeting.
August 14, 1990	Visit to Blood Reserve and oral presentation.
August 15, 1990	Visit to Lethbridge Correctional Centre and meeting with Native Brotherhood. Visit to Sik-ooh-kotoki Friendship Society premises, Lethbridge, and receipt of Society's oral presentation.
August 16, 1990	Meeting with local service providers, Lethbridge.
August 22, 1990	Oral presentation, Elizabeth Fry Society of Calgary. Meeting with representatives of the Legal Aid Society of Alberta. Meeting with representatives of the City of Calgary Aboriginal Urban Affairs Committee.
August 23, 1990	Meeting with Calgary Police Service. Visit to Calgary Young Offender Centre and meeting with Native inmates.
August 27, 1990	Oral presentation, National Aboriginal Communications Society. Oral presentation, Alberta Liberal Party Caucus.
August 28, 1990	Oral presentation, John Howard Society of Edmonton.

August 29, 1990	Oral presentation, Oblates of Mary Immaculate and the Roman Catholic Archdiocese of Edmonton. Oral presentation, Native Education Project, Department of Education, Government of Alberta.
August 30, 1990	Task Force meeting.
September 4, 1990	Oral presentation, Elizabeth Fry Society of Edmonton.
September 5, 1990	Oral presentation, Canadian Human Rights Commission.
September 6, 1990	Oral presentation, Poundmaker's Lodge. Oral presentation, Alberta Federation of Metis Settlements.
September 7, 1990	Oral presentation, Native Counselling Services of Alberta.
September 10, 1990	Meeting with Crown Prosecutors. Oral presentation, Alberta Association of Social Workers.
September 11, 1990	Visit to Peace River Correctional Centre.
September 13, 1990	Oral presentation, National Parole Board. Steering Committee meeting.
September 14, 1990	Oral presentation, Edmonton Police Service.
September 17, 1990	Oral presentation, John Howard Society of Alberta.
September 18, 1990	Oral presentation, Lesser Slave Lake Indian Regional Council, Horse Lake Reserve. Visit to Grande Prairie Young Offender Centre.
September 21, 1990	Task Force meeting.
September 25, 1990	Oral presentation, Indian Association of Alberta.
September 27, 28, 29 and 30, 1990	Planning Session, Sundre.
October 2, 1990	Meeting with representatives of Department of Indian and Northern Affairs. Meeting with representatives of Career Development and Employment.
October 22, 1990	Oral presentation, Metis Association of Alberta.
October 24, 1990	Meeting with Neil McCrank, Deputy Attorney General and Jack Davis, Deputy Solicitor General.
October 25, 1990	Task Force Meeting
October 26, 1990	Task Force Meeting

November 8, 1990	Task Force Meeting
November 9, 1990	Meeting with The Honourable W.J.C. Kirby
November 15, 1990	Task Force Meeting
November 16, 1990	Task Force Meeting
November 19, 1990	Meeting with representatives of Native women.
November 20, 1990	Steering Committee Meeting
November 22, 1990	Task Force Meeting
November 23, 1990	Task Force Meeting
November 29, 1990	Task Force Meeting
November 30, 1990	Task Force Meeting
December 3 - 7, 1990	Task Force Meeting
December 10 - 17, 1990	Task Force Meeting
December 20, 21, 1990	Task Force Meeting
December 31, 1990	Task Force Meeting
January 23, 24, 25, 1991	Task Force Meeting
February 12, 13, 1991	Task Force Meeting
February 25, 1991	Task Force Meeting
March 4, 1991	Task Force Meeting
March 15, 1991	Task Force Meeting



APPENDIX 7

LIST OF SUBMISSIONS MADE TO THE TASK FORCE

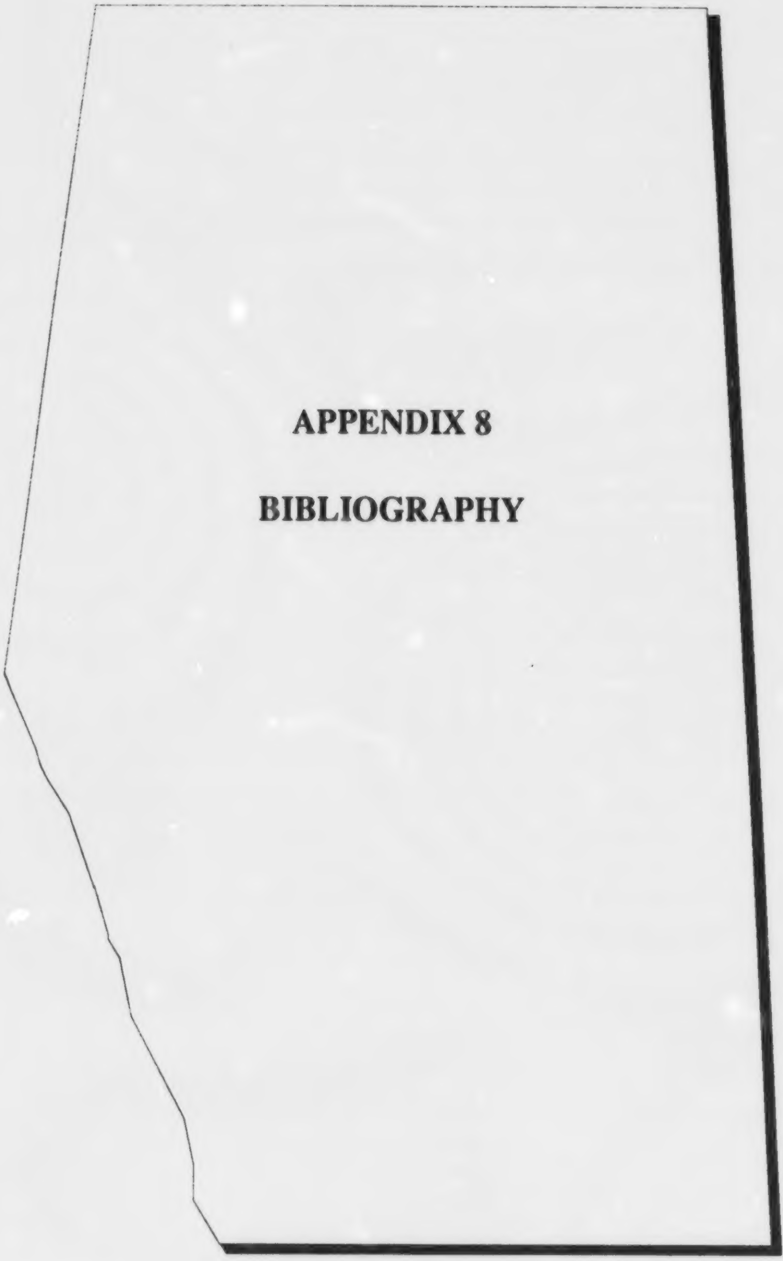
APPENDIX 7

LIST OF SUBMISSIONS MADE TO THE TASK FORCE

1. Native Brotherhood/Sisterhood - Fort Saskatchewan Correctional Centre
2. Operation Friendship - Edmonton
3. A.A.D.A.C. - High Level
4. Dene Tha' Women's Society
5. "Talking Drum" Youth Program
6. Tallcree Band
7. Boyer River Band
8. Louis Bull Police Department
9. Calgary Police Service
10. Father Camille Piche
11. Native Brotherhood, Drumheller Institution
12. John Maguire, Hearing Officer Provincial Court, Calgary, Alta.
13. Daniel Beatty (Pawis)
14. Red Deer Native Friendship Society
15. Native Brotherhood, Grande Cache Correctional Centre
16. Alberta Association of Social Workers (AASW)
17. National Aboriginal Communications Society
18. The Edmonton John Howard Society
19. The Native Brotherhood of Edmonton Institution
20. Oblates of Mary Immaculate and the Roman Catholic Archdiocese of Edmonton
21. The SIK-OOH-KOTIKI Friendship Society - Lethbridge
22. The John Howard Society of Alberta

23. The Ben Calf Robe Society
24. alterNATIVE COMMUNITY DEVELOPMENT CENTRE
25. Elizabeth Fry Society - Calgary
26. Neeyanan Association (Peerless Lake)
27. Loon Lake Community
28. Doug Parenteau (Bowden Institution)
29. Whitefish Lake Band/Gift Lake Metis Settlement
30. Alexander Tribal Government
31. Elizabeth Fry Society of Edmonton
32. Alberta Liberal Party Caucus
33. Native Law Subsection, Canadian Bar Association (Alberta Branch)
34. Alberta Education, Native Education Project
35. Indigenous Bar Association
36. Edmonton Police Service
37. The Grierson Centre
38. Alberta Federation of Metis Settlements
39. Yellowhead Tribal Council
40. Poundmaker's Lodge
41. Dene Tha' Band of Assumption
42. Leonard (Tony) Mandamin
43. Native Counselling Services of Alberta
44. Canadian Human Rights Commission
45. Reverend Ubald Duchesneau, OMI
46. The Sunchild Cree Band
47. The Blood Tribe

48. Boyle Street Community Services Co-op
49. Lesser Slave Lake Indian Regional Council
50. Thomas R. Goodson
51. Nechi Institute on Alcohol and Drug Education
52. The Metis Association of Alberta
53. The Legal Aid Society of Alberta
54. The Indian Association of Alberta
55. The City of Wetaskiwin
56. The Sarcee Band



APPENDIX 8

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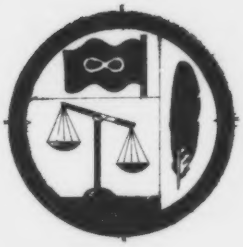

The Cover Design:

The Circle

The circle is important in the cosmology and culture of Aboriginal people. The sun and the moon appear as circles. Cosmological phases manifest themselves as cycles. Aboriginal people have incorporated these into their worldview and culture by adopted wholistic views and values.

The Eagle Feather

Aboriginal people believe that all creation is equal and it is all animate. All animals have a spirit, which is the essence of life. Animals have powers and knowledge that human do not have, but to which they aspire. The eagle is revered for its power and knowledge, for its broad views of the world when in flight and for strength, vision and beauty.

-- Leroy Little Bear

Flags of the Metis

The first flag of the Metis Nation is estimated to have been developed around the period 1814-15 in what is now known as Manitoba. The design was a white 'lazy eight' on a brilliant red background. The meaning of the figure eight placed on its side was two-fold: (1) it represented the symbol for infinity, that is, the Metis nation will last forever; and (2) the coming together of two cultures, Indian and white, to form a distinct new nation. Later, a second flag was developed. This second lag was the white 'lazy eight' set on a royal blue background. The second flag was developed out of historic difference between the English half-breeds and the French Metis. The English half-breeds tended to be employed by the Hudson's Bay Company and flew the blue flag. The French Metis predominantly worked for the North West Company and flew the red flag. Although other flags were developed and flown by the historic Metis nation the white 'lazy eight' is probably the most well known. Both the red and blue version of this flag have been flown throughout history however today the red flag is the one most often flown by the Metis Association of Alberta and the Metis communities throughout Alberta.

-- Cynthia Bertolin

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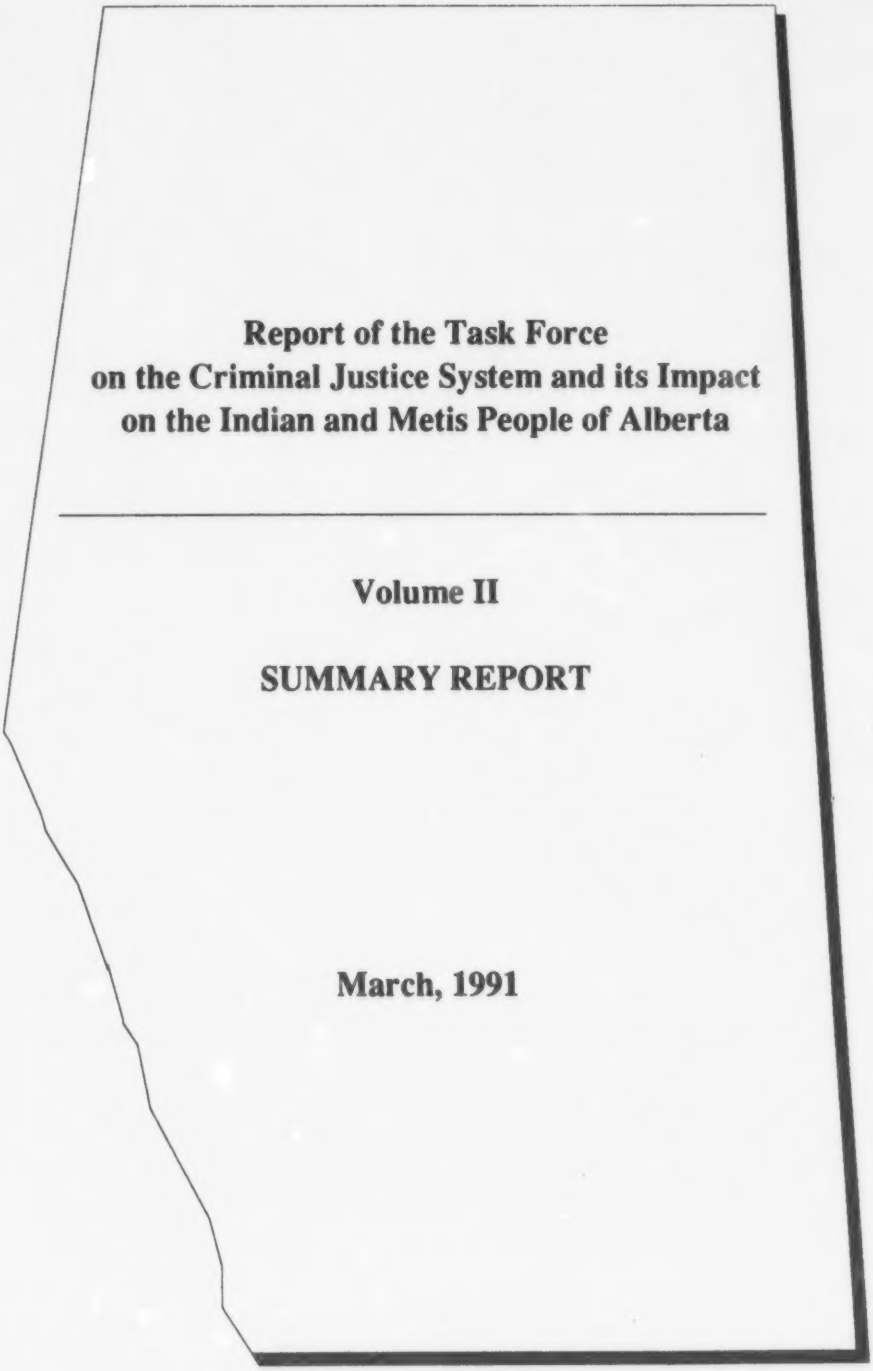
Volume

2

Justice on Trial

Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta

Volume II Summary Report



Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta

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Volume II

SUMMARY REPORT

March, 1991

Printed on Recycled Paper

Summary Report

Preamble

The overall objective of the Task Force was to complete a review of the impact of the criminal justice system in Alberta as it relates to Aboriginal people. The review included examination of the criminal justice system as it effects Aboriginal people according to their demographics for the purpose of identifying the areas in and the extent to which Aboriginal people are treated differently from non-Aboriginal people, and to assess whether that different treatment is desirable or detrimental. Further to that, the Task Force attempted to identify areas where, and to what extent, Aboriginal people *should* be treated differently from non-Aboriginals within the system. Having done so, the Task Force then considered alternative methods of approaching justice for Aboriginal people.

In reference to these broad objectives, the Task Force carried out a literature review and an in-depth consultation that encompassed the areas of Policing, Legal Aid, Courts, Court Personnel, Corrections, Native Counselling Services of Alberta, Socio-economic Factors, Jurisdiction, Government Departments, Cross Cultural Training, Aboriginal Youth and Aboriginal Women, Ongoing Process, and Aboriginal Perspectives on Justice, aimed at identifying problems and proposing solutions to ensure that that the Aboriginal people receive fair, just and equitable treatment at all stages of the criminal justice process in Alberta.

The purpose of this document is to summarize the recommendations offered by the Task Force in fulfillment of the mandate as set out in the Terms of Reference. The recommendations are numbered according to the system adopted for the main report, where the first digit of the number refers to the chapter in which the recommendation appears (along with the findings that support it); and the numbers following - to the specific recommendation within the chapter. It should be noted that the chapter number and the term of reference numbers do *not* always correspond, and for that reason, the appropriate terms of reference have been provided as a preamble to each set of recommendations.

The Task Force has made its recommendations with regard for present constitutional and legal frameworks in Canada and Alberta, and offers them in a spirit of progress toward a fair, just and equitable system of justice for all Canadians.

2.0 Policing

Term of Reference:

Policing 2 (a)

To review the delivery of policing services to Indian and Metis communities and more specifically, regarding indentifiable Indian and Metis communities, the Task Force will:

i) Examine the existing relationship between members of the Indian and Metis communities and the R.C.M.P.

The Task Force Recommends:

2.1 That the police, in consultation with Aboriginal leaders, respond to the policing priorities and needs as defined by Aboriginal communities. At present, the R.C.M.P. and Aboriginal communities are establishing non-political aboriginal advisory committees which are consulted about community needs. We encourage this development and recommend that this activity include Indian Reserves, Metis Settlements, and communities with a significant Aboriginal population.

2.2 That the R.C.M.P. in the field receive Aboriginal awareness training geared to sensitizing front-line officers to local Aboriginal culture. We have been advised that the R.C.M.P. is currently in the planning stages of providing such training to "K" Division front-line officers.

2.3 That an external system be established for the auditing of the R.C.M.P.'s relationship with the Aboriginal community. This audit must include Aboriginal people and be geared to determining the level of user and community satisfaction.

2.4 That the R.C.M.P. accelerate efforts to recruit Aboriginals. This measure is important to attain credibility in the eyes of the community while providing a culturally- sensitive police service. At the same time, it is acknowledged that the R.C.M.P. has recruited significantly greater numbers of Aboriginals than its municipal counterparts in Edmonton, Calgary, and particularly Lethbridge.

2.5 That the R.C.M.P. be involved in any community workshops or legal education sessions for Aboriginal people which address police practices, policies, and other relevant matters, and that this involvement continue to be a responsibility of R.C.M.P. officers to the community. Legal education is required for residents of Aboriginal communities so that they will be less vulnerable to the abuse of their rights and will know the law and understand it. While this is a matter of community crime prevention and lies outside of the police role proper, R.C.M.P. involvement in such community sessions is critical to the development of a good relationship with the community.

2.6 That an overall crime prevention program be initiated by communities, with community members to co-ordinate and deliver services. This program should not be confused with the role of the police.

2.7 That the federal and provincial governments direct crime prevention funds to Aboriginal communities, and that community members co-ordinate and deliver these prevention services in consultation with the police. Crime prevention funds should be directed to community members and/or Aboriginal organizations in a position to deliver this service.

Term of Reference:

Policing 2(a)(ii)

Examine the existing lines of communication between the R.C.M.P. and municipal police forces and Indian and Metis leaders to determine if existing police practices are responsive to Indian and Metis concerns, in particular the degree of Indian and Metis input into the identification of enforcement problems and the development of solutions.

The Task Force Recommends:

2.8 That at minimum, the R.C.M.P. and municipal police services in Alberta establish and maintain liaison and communications with Indian and Metis organizations of Alberta at the corresponding level of jurisdiction.

2.9 That the government of Alberta, in consultation with Aboriginal organizations, develop a process to ensure the ongoing input from and participation by Aboriginal organizations in the development of policing policy and initiatives.

2.10 That R.C.M.P. detachments together with Aboriginal communities develop a forum or process for ensuring that local communities have input into the identification of problems and the development of solutions.

2.11 That the current trend to establish sub-detachments and workstations in remote and rural areas, or on lands reserved for Indian and Metis people continue when and where requested by the community and when and where feasible.

2.12 That, if the Detachment provides service to an Aboriginal community, the R.C.M.P. recruit local Aboriginal people to non-police positions in the detachment area.

2.13 That R.C.M.P. detachments work with Aboriginal communities to improve existing policies or practices by developing acceptable methods or practices to communicate information back to the community.

2.14 That when and where possible, R.C.M.P. members spend time in Aboriginal communities in a non-enforcement police capacity.

2.15 That R.C.M.P. members be encouraged to participate in non-police activities and community events in Aboriginal communities, and that Aboriginal communities actively invite the R.C.M.P. to participate.

2.16 That when and where a municipality has a significant number of Aboriginal residents, or a disproportionate amount of police workload involves Aboriginals, they be represented on the Police Commission.

2.17 That municipal policing agencies become involved in and respond to invitations to social and cultural events hosted by Aboriginal communities located in or near the municipalities, and that Aboriginal people extend invitations to police agencies when hosting community events.

2.18 That Aboriginal communities be encouraged to develop local advisory groups to address policing issues in municipalities.

2.19 That municipal police agencies work with Aboriginal communities to improve existing policies or practices by developing acceptable methods or practices to communicate information back to the community.

2.20 That when and where a disproportionate amount of police workload involves Aboriginals, the municipal police in consultation with Aboriginal organizations develop a process to allow them input into, or participation in the development of programs and other initiatives, as well as in planning and service delivery.

2.21 That when and where a large number of Aboriginal people reside in a municipality or a disproportionate amount of the police workload involves Aboriginals, a municipal police service actively and affirmatively recruit Aboriginal people to policing and non- policing positions in the police service.

2.22 That a position be established for liaison with Aboriginal communities by municipal police services which do not currently have such a position and have a workload which involves Aboriginals disproportionately, or serve a community with a large Aboriginal population.

2.23 That, when and where possible, Aboriginal members of municipal police services be involved in policing activities related to the Aboriginal community.

2.24 That municipal police who have a disproportionate workload of Aboriginals or serve a community with a significant Aboriginal population, be in regular contact with local and provincial levels of Aboriginal leadership, without being limited to the boundaries of the municipality. It is important that municipal police services establish and maintain liaison with surrounding Aboriginal communities.

Term of Reference:

Policing 2 (a) (iii)

Examine the existing level of police service in the Indian and Metis communities, the working relationship between the R.C.M.P. personnel and band special constables, and the effectiveness of special programs such as crime prevention initiatives and other forms of police/community involvement.

The Task Force Recommends:

2.25 That the provision of policing service to rural and remote Alberta be reviewed by the parties who provide and receive the police service in order to address service delivery issues and options.

2.26 That, at the request of an Aboriginal community , a detachment, satellite detachment, or workstation be established in the community where feasible. Use of these facilities should be made an efficient and effective component of police duties.

2.27 That police training programs emphasize the exercise of discretion and the development of alternative problem-solving approaches to conducting police work, which are more in tune with expectations of Aboriginals of the role of a police officer in their communities.

2.28 That the current process of taking complaints, or call diverter system, be altered and made sensitive to the needs of Aboriginal communities.

2.29 That crime prevention and other pro-active police initiatives in Aboriginal communities be given the same weight as other activities in the assessment of detachment workload.

2.30 That foot patrol programs be established in urban centres with districts with large Aboriginal populations.

2.31 That foot patrol officers receive extensive and on-going Aboriginal awareness training.

2.32 That municipal police agencies in co-operation with urban Aboriginal service agencies establish an inter-agency working group to co-ordinate service delivery to Aboriginal people. This group should have as many representatives from Aboriginal service providers as possible.

2.33 That Aboriginal spokesgroups in urban centres, for example, Canadian Native Friendship Centres or Metis Locals, be approached by municipal police agencies on an on-going basis for the purpose of identifying the concerns or needs for service of the Aboriginal community.

2.34 That Indian Bands and the R.C.M.P. meet for the purpose of resolving jurisdiction disputes related to enforcement of Band By-law prosecutions.

2.35 That Canada, Alberta and Indian organizations meet for the purpose of resolving jurisdiction disputes related to Band By-law prosecutions.

2.36 That the R.C.M.P. and Band Constables develop a protocol for liaison and communication to deal with matters pertaining to reserves, while recognizing that there are overlapping areas of jurisdiction.

2.37 That Indian Bands consider making Band Constables accountable to a body external to and independent of the Band Council.

2.38 That R.C.M.P. conferences or meetings about Aboriginal policing issues involve Band Constables as participants or presenters where appropriate.

2.39 That Band Constables be invited to participate in interagency committees of service providers where such committees exist.

2.40 That police services continue to be involved in pro-active and preventative policing endeavours, only limited by their resources. In developing initiatives, police should have meaningful input from the Aboriginal community to ensure the initiatives are relevant and culturally sensitive.

2.41 That service providers, for example, social services, Solicitor General personnel, police, health personnel, and the Aboriginal communities form an inter-agency working group which includes local Aboriginal community members as representatives.

2.42 That, when and where possible, resources for prevention programming be transferred to Aboriginal communities, and that programs be delivered by community members.

2.43 That funding agencies acknowledge that programs initiated by Aboriginal communities cannot be assessed or funded based on a segmented urban style of service delivery. Innovation, flexibility, and co-operation or joint funding between agencies is imperative to ensure that good initiatives receive proper support and resources.

2.44 That service providers engage in a pro-active approach to service delivery in Aboriginal communities. That is, that service agencies address the needs and try to develop solutions in co-operation with the Aboriginal community.

2.45 That Aboriginal communities acknowledge that criminal justice is an important issue to all community members, and that they place a higher priority on criminal justice issues, especially crime prevention.

Term of Reference:

Policing 2(a)(iv)

Review the impact of the R.C.M.P. Special Constable program in relation to the original objectives of the program in light of current needs.

The Task Force Recommends:

2.46 That the R.C.M.P., the Department of the Alberta Solicitor General, and the Department of Indian Affairs and Northern Development articulate clearly their intent with respect to the policing of Aboriginal people in Alberta, particularly in light of the recent change made in the status of the Special Constables.

2.47 That the 3(B) program be changed to an affirmative action program geared to accelerating the recruitment of Aboriginals.

2.48 That Aboriginal Constables be re-oriented or that their mandate be re-adjusted to the task of community relations and pro-active policing. The Task Force has been told that this initiative may already be under-way.

2.49 That the R.C.M.P. build upon the successes of the 3(B) program with respect to Aboriginal recruitment. The program is the most successful of the Aboriginal recruitment initiatives which have come to the attention of the Task Force. We conclude that, in spite of its drawbacks, the program contains some ingredients of success.

Term of Reference:

Policing 2(b)

As it relates to Indian and Metis people in urban and isolated settings, to review existing relationships between Indian and Metis people and municipal police forces and the R.C.M.P.

The Task Force Recommends:

2.50 That the R.C.M.P. and municipal police force Chiefs establish formal communication channels with leaders or representatives of the respective Aboriginal communities. We are encouraged by the initiative of the R.C.M.P. "K" Division which has recently formed an Elders' Advisory Committee to the Commanding Officer.

2.51 That the Indian Association of Alberta and the Metis Association of Alberta take a leadership role in relation to the problem of urban Aboriginal people in conflict with the Criminal Justice system.

2.52 That community policing and police prevention programs be Aboriginal-specific in identifiable Aboriginal communities in urban areas.

2.53 That Aboriginal Constables be stationed in identifiable communities with high Aboriginal populations.

2.54 That Native Friendship Centres and other local Aboriginal service agencies in urban and rural areas be used as channels for liaison between the Aboriginal community and the police officer working at the "zone" level. The Task Force encourages the establishment of this relationship where it is not currently in place.

2.55 That municipal police services place a high priority on the establishment of good working relationships with the Aboriginal communities and that this relationship be reflected in Aboriginal-specific community outreach and liaison programs,with activity levels and resources proportionate to the Aboriginal workload.

2.56 That Native Counselling Services of Alberta and other Aboriginal service organizations be recognized and used as appropriate resources in the absence of an organized community group which can represent urban Aboriginal people with respect to Criminal Justice issues.

2.57 That all sizable municipalities with a significant Aboriginal population form Urban Aboriginal Affairs Committees to include among general concerns, Aboriginal Justice/Police issues. The Task Force has been advised by the Mayor of Edmonton that plans are being developed for an Aboriginal Advisory Committee. The Task Force applauds this move and urges the City to give this committee a high profile in civic affairs.

2.58 That urban police services establish an effective liaison with reserves and surrounding communities. The Task Force was impressed by the effort in this respect made by the Calgary Police Service.

Term of Reference:

Policing 2(c)

To review and assess the current recruit training and other in-service training programs of the R.C.M.P. and municipal police forces in so far as this training relates to Indian and Metis cultural awareness and understanding.

The Task Force Recommends:

2.59 That all police services, when they deal with a significant number of local Aboriginals, establish a specific awareness program geared to sensitizing their members and staff to Aboriginal issues.

2.60 That Aboriginal people not be defined as a member group of the multicultural mosaic, but as members of society with First Nation status and Aboriginal status.

2.61 That Aboriginal people, during the course of Aboriginal awareness training, be identified as a group which requires remedial measures and assistance to be able to be represented on Alberta's police forces in proportion to their numbers in the respective communities.

2.62 That police officers be required to take Aboriginal awareness refresher training after experience in the field. This recommendation is made because training during induction may be viewed somewhat academically by recruits during their first exposure to the Aboriginal community.

2.63 That Aboriginal people be utilized to deliver Aboriginal awareness training.

2.64 That Aboriginal recruits and staff take awareness training as well as non-Aboriginal staff, so that a cross-cultural dimension can be added to group discussions.

2.65 That delivery of Aboriginal awareness training include a significant amount of group discussion, and not consist of lectures only. This is important since the content and substance of Aboriginal awareness training deals with learned and ingrained attitudes on the part of the participants. Differing views and reactions must be allowed to be worked through in the sensitization process.

2.66 That Aboriginal awareness programs and sessions include as a central theme that Aboriginal people have special rights and that the relationship between the Government of Canada and Aboriginal people as defined in Section 35 of the Constitution Act is the starting point for the contemporary nature of this relationship.

2.67 That the Solicitor General of Alberta provide leadership in establishing a co-operative Provincial Aboriginal Awareness program for non-R.C.M.P. provincial police officers, and that Aboriginals have input in the development of this program.

R.C.M.P.:

2.68 That the generic or central Aboriginal awareness training at the Training Academy be supplemented at the local and field level with a program to sensitize detachment staff to the particular cultures of the communities which they serve, and that this program include a visit to a local Indian or Metis community.

2.69 That the Aboriginal-specific component of multi-cultural training be enhanced both in quality and in time allocated. Given the size of the Aboriginal population as a client group of the R.C.M.P., the allocation of seven hours during a six-month program can probably be increased.

2.70 That the Aboriginal-specific component of multi-cultural training at the Training Academy distinguish more adequately between the Indian and Metis cultures of Canada. Leaders in the Indian and Metis communities should be consulted for this purpose.

2.71 That Aboriginal spirituality be included as part of the Aboriginal-specific training program at the Training Academy and that the Aboriginal community be consulted in the determination of appropriate learning materials.

2.72 That Aboriginals be engaged in the presentation of the Aboriginal-specific component of multi-cultural training.

2.73 That an extensive Aboriginal awareness program or exposure to the Aboriginal community be made mandatory for senior R.C.M.P. personnel and supervisors. This recommendation acknowledges that supervisors and managers require this exposure in order to provide the appropriate leadership to field staff.

2.74 That the civilian staff of the R.C.M.P. also receive Aboriginal awareness training.

Term of Reference:

Policing 2(d)

To review and assess the recruitment and selection programs of the R.C.M.P. and municipal police forces that are designed to attract Indian and Metis people into the respective police forces.

The Task Force Recommends:

2.75 That all Alberta police services, including the R.C.M.P., streamline and shorten the recruitment process for Aboriginal applicants.

2.76 That the police services of Alberta, including the R.C.M.P., commit themselves to an affirmative action plan designed to increase significantly the level of Aboriginal recruitment. The pre-employment up-grading program under consideration by the Edmonton City Police Service is a positive affirmative action response to the recruitment problem. The Head Report suggests that a similar approach is under consideration by the R.C.M.P. The Task Force commends these initiatives.

2.77 That affirmative action programs allow Aboriginal applicants to be up-graded to meet realistic uniform standards for all police officers at the recruitment level. This would ensure that Aboriginal and non-Aboriginal officers, once recruited, would be on a level playing field with police officers.

2.78 That police forces express commitment and adopt a long-term plan for Aboriginal recruitment and that they begin immediately to educate young people in the communities about the positive aspects of policing and policing careers so that, in future, potential Aboriginal recruits will not have a negative and reactive view of policing. The newly implemented Calgary Police Service outreach program is commended as a positive example of such an approach.

2.79 That police forces dedicate staff and resources to their efforts to recruit Aboriginals. This process must be Aboriginal-specific and tailored to Aboriginal culture and the needs of police as well as of Aboriginal communities.

2.80 That recruiters be Aboriginal recruitment specialists who have considerable knowledge of Aboriginal culture and that these recruiters be Aboriginal themselves.

2.81 That recruitment goals for Aboriginal police be set ideally to reach levels of recruitment which correspond to the proportion of Aboriginal people in the community.

2.82 That the Task Force adopt recommendation No. 52 of the Head Report, which reads as follows: *"That the Force re-examine the application processes and change where necessary to ensure they are not culturally biased against Native persons."*[97]

2.83 That all municipal police forces in Alberta review their application process and criteria for the purpose of eliminating cultural bias, and identify other recruitment barriers such as physical fitness, eyesight requirements, and education.

2.84 That police forces apply cluster hiring as a recruitment strategy.

2.85 That police forces retain the services of one or more Indian or Metis Elders as a method of providing support to Aboriginal police officers.

2.86 That Aboriginals with criminal records not be excluded necessarily from the recruitment process and that the respective police forces and R.C.M.P. articulate policy with respect to the recruitment of Aboriginals with criminal records.

2.87 That the R.C.M.P. Native Special Constable Program be examined by Alberta police recruiters to determine the factors contributing to success so that these factors can be applied in recruitment processes and programs.

Term of Reference:

Policing 2(e)

To review operational policies and practices of the R.C.M.P. and municipal police forces as they relate to the exercise of police powers as between Indian and Metis people and non-Indian and non-Metis people to determine if there are differences in treatment and whether those differences are desirable or detrimental.

The Task Force Recommends:

2.88 That policing organizations together with Aboriginal organizations and communities enter into on-going discussions to examine policies and practices used by policing services which, by their nature or application, have a

disproportionately harsh or inequitable impact on Aboriginal people.

2.89 That police services, in addition to the usual factors, take into consideration the residence of an Aboriginal person when determining the option of release with a Notice to Appear or arrest, to ensure that undue hardship does not result.

2.90 That when Aboriginal persons are arrested, removed from a community and transported to another community, and then are released from custody, the police agency assume the responsibility for making arrangements for their return to the community in which they were arrested.

2.91 That police organizations, the Indian Association of Alberta, and the Metis Association of Alberta examine programs and initiatives of police agencies that have a significant impact on Aboriginal people so that viable solutions and alternatives can be developed.

2.92 That Canada and Alberta, and Aboriginals, develop educational materials about Indian and Metis people to educate the public about Aboriginal issues, history, rights, and culture.

2.93 That the Indian and Metis organizations of Alberta and Alberta Aboriginal communities become involved in the issue of differential policing for the purpose of identifying and reporting it.

2.94 That all police organizations in Alberta maintain statistics which would allow for the identification of Aboriginal workload or contact.

2.95 That Aboriginal communities, police agencies and service providers at the local level enter into discussions to determine formal and informal resources and programs in the community, for the purposes of diversion and co-ordination to address the issue of Aboriginal people in conflict with the law.

2.96 That police services ensure that multiple charges resulting from a one fact situation is discouraged or eliminated.

2.97 That, where police have doubts or are unsure about the appropriate charge to lay, they seek advice with respect to the appropriate charge. Advice may be sought from, for example, a senior officer, prosecutor or lawyer before the charge is laid.

2.98 That Aboriginal communities be provided with education and information about proper police conduct, individual rights, including the right to lodge a complaint, and about the mechanisms for lodging complaints.

2.99 That a position of Aboriginal Advocate be established within the Aboriginal Justice Commission, independent from the police and that this position have a mandate to accept and advance police complaints on behalf of Aboriginal people.

2.100 That all complaints against police lodged by Aboriginal people and received by an R.C.M.P. detachment or police service be forwarded annually to the Aboriginal Advocate.

2.101 That the policing services of Alberta, the Indian Association of Alberta, and the Metis Association of Alberta enter into discussions to identify Aboriginal people who will assist in the review of police complaint investigations.

2.102 That the results of any investigations resulting from a complaint advanced by the Aboriginal Advocate be forwarded to the Aboriginal Advocate, so that the results can be given to the complainant. Accompanying this feedback to the complainant should be explanations regarding appeals processes should the complainant want to proceed further.

2.103 That all Criminal Justice personnel be provided with information about the role of the Aboriginal Advocate. In addition, a policy should be developed to ensure that, if information surfaces about police impropriety, Criminal Justice personnel forward their concerns to the Advocate's office.

2.104 That the Aboriginal Advocate's office be given a toll free line for the lodging of complaints to ensure that the office is accessible from anywhere in the province.

2.105 That police complaint appeal bodies include Aboriginal representation.

2.106 That the Anunga Rules be endorsed and adopted.

2.107 That police agencies review agency policies on the taking of statements to ensure that they reflect the Anunga Rules; and that where this is not the case, steps be taken to incorporate these Rules in a culturally sensitive way.

2.108 That Canada and Alberta meet formally to outline a comprehensive policy framework to guide the development of policing programs, and that the respective Aboriginal communities be consulted in the process. Given the increasing Indian population on reserves and the high crime rate, it is clear that these communities will demand more policing program services. A Federal Inter-Departmental Task Force on Indian Policing Policy (1990) has stated that the jurisdiction of on-reserve policing is shared by the federal and provincial governments. However, the exact measure of the respective responsibilities has not been defined.

2.109 That funding responsibilities by the federal and provincial governments be identified clearly in relation to policing programs and in accordance with the overall policy. Clarification of funding responsibilities will enable Aboriginal communities to plan more easily for the administration of their programs.

2.110 That federal and provincial governments continue to support community-based, community-managed, and community-controlled programming as a legitimate way for Aboriginal people to gain greater control over their communities and programs, and that policing services be recognized as a component of the community program.

2.111 That where Aboriginal communities assume the responsibility for policing themselves, they be given the full benefit of the experience and expertise of established police forces such as the R.C.M.P. as well as support and guidance from the provincial Solicitor General's Department. Without this support, promising initiatives such as the Louis Bull and Blood Tribe policing programs will likely fail.

2.112 That police services in Alberta reflect, at minimum, the cultural make-up of the community it polices.

2.113 That Aboriginal style policing or peace-keeping be formally recognized in government policy as the police service required on Indian Reserves and Metis Settlements/communities of Alberta.

2.114 That, where practical and feasible, the responsibilty for regional policing arrangements and police forces with Aboriginal Police Commissions be assumed by Aboriginal communities requesting this service.

2.115 That, in the context of federal-provincial funding arrangements, the provincial government develop a policing policy which outlines short and long-term policing strategies and associated funding responsibilities in relation to the various policing models and options available.

2.116 That the provincial government policing policy serve as a framework for the evolution of provincial policing arrangements over the next decade, and that this policy also address a Provincial Aboriginal Police Service as a contingency.

3.0 Legal Aid

Term of Reference:

Legal Aid 3(a)

to determine the extent to which Indian and Metis people involved with the criminal justice system are aware of the availability of legal aid, how to obtain legal aid and the extent to which legal aid is presently provided following arrest, when appearing before a Justice of the Peace, or when first appearing in Court.

Term of Reference:

Legal Aid 3(b)

To identify the deficiencies that exist between the present system of legal aid respecting the needs of Indian and Metis people involved with the criminal justice system, and to determine how these deficiencies can be effectively addressed.

The Task Force Recommends:

3.1 That the Legal Aid Society include in its mandate a requirement to educate the Aboriginal people of Alberta about the services offered by the Society.

3.2 That the Legal Aid Society translate into Cree, Blackfoot and Dene Tha', informational pamphlets on services offered by the Society.

3.3 That the Government of Alberta develop standardized signs to be posted in Alberta gaols, penitentiaries and police lock-ups with respect to the availability of Legal Aid, and a method for including and keeping current the names and phones numbers of lawyers funded by Legal Aid.

3.4 That Legal Aid coverage of summary conviction offences be extended, as a necessary affirmative action program, to all accused Aboriginals who are eligible.

3.5 That Legal Aid only take bail money from Aboriginal clients to cover fees when written consent has been received from the person who posted the bail.

3.6 That lawyers funded by Legal Aid who serve Aboriginal clients be required to take cross-cultural training.

3.7 That the final account paid by the Legal Aid Society to the lawyer funded by Legal Aid be provided to Legal Aid recipients, and that recipients be informed that they have the right to review and question the account.

3.8 That Aboriginal communities, the Governments of Alberta and Canada, and the Legal Aid Society work together to consider alternative methods of providing legal service. Examples are: a public defender or hybrid system for areas in the province where significant numbers of Aboriginal people reside.

3.9 That Aboriginal communities work together with the Legal Aid Society, the Governments of Alberta and Canada, and the Indigenous Bar Association to establish a public defender/staff lawyer program to serve the needs of poor Aboriginal people in the Slave Lake district.

3.10 That the Legal Aid Society ensure that there is a culturally sensitive complaint process for Aboriginals who are not able to express themselves effectively in written or spoken English.

3.11 That the Criminal Trial Lawyers Association reassess the importance of adjusting to the changing needs of Aboriginal communities in Alberta who utilize their services through the Legal Aid plan.

3.12 That the Legal Aid Society invite lay Aboriginal community members in preference to Native Counselling Services of Alberta staff to represent Aboriginal concerns on regional committees.

4.0 The Courts

Term of Reference:

Courts 4(c)

to examine existing levels of community input and assess the feasibility of permitting a greater degree of participation by knowledgeable and respected Indian and Metis people in the sentencing process.

The Task Force Recommends:

4.1 That the supervising Queen's Bench Justice for every Judicial District in Alberta establish a committee of Judges composed of Queen's Bench Justices and Provincial Court Judge(s) to establish and monitor liaison between the judiciary and Aboriginals.

4.2 That Alberta Judges respond actively to opportunities to attend Aboriginal social and cultural events.

4.3 That Aboriginal communities invite Judges to attend social and cultural events.

4.4 That Judges participate in and provide input into inter-disciplinary committees when Aboriginal issues are discussed.

4.5 That Chief Justices and the Chief Provincial Court Judge establish a channel of communication with leaders of the Indian and Metis Associations.

4.6 That government support the Lesser Slave Lake Indian Regional Council initiative for the training of Indian Justices of the Peace through a certification program, developed in collaboration with the Faculty of Law, University of Alberta, that will apply province-wide.

4.7 That a review of lay Judges and their value in remote areas be undertaken to determine if a program of appointments and training of Aboriginal lay Judges for these areas is warranted.

4.8 That, when Aboriginal lay persons are considered for appointments as Justices of the Peace, they be fully trained and empowered to hear summary conviction offences in the communities in which they live and serve.

4.9 That Justices of the Peace be appointed in the same manner as Provincial Court Judges, with the added input from Indian and Metis Associations and/or communities.

4.10 That the Chief Judge of the Provincial Court be given the power to supervise Aboriginal Justices of the Peace.

4.11 That Aboriginal people be appointed to fill all positions necessary to operate an Aboriginal Provincial Court (Criminal Division) to go on circuit, for example, in the Slave Lake District of Alberta.

4.12 That Aboriginal people be appointed to fill all positions necessary to operate an Aboriginal Provincial Court (Criminal Division) in a large urban centre.

Terms of Reference

Courts 4(a)

to examine the extent to which Indian and Metis people currently experience difficulty when appearing in Court as a result of their unique languages and culture.

Courts 4(f)

to determine to what extent Indian and Metis people appearing in a court are presently provided with interpreters/translators and to determine if there are tangible benefits to permitting Indian and Metis people to using their own language in the courts.

The Task Force Recommends:

4.13 That interpretation and translation services for criminal court be provided at public expense to all Aboriginals for whom English is a second language and who require assistance.

4.14 That the Government of Alberta together with the Aboriginal community develop interpreting and translation courses for the main Aboriginal language groups in the province, and find uniform ways for the interpretation of legal concepts in the Aboriginal languages.

4.15 That the right of Aboriginal people to be heard in their first language be recognized. Translation and interpretive services exist for the benefit of the court and should be paid for at public expense.

Term of Reference:

Courts (4d)

to assess the desirability and the extent to which Court sittings should be routinely and/or selectively held in identifiable Indian and Metis communities.

The Task Force Recommends:

4.16 That regular sittings of the Court of Queen's Bench be held in High Level.

4.17 That all court sittings be held closer to Aboriginal communities.

4.18 That all court sittings be reviewed and located on Indian Reserves, and in Metis Settlements and Metis communities throughout the province, with the concurrence of the community.

4.19 That, when elections are made for a Court of Queen's Bench Judge to sit alone, the Court sit wherever a circuit provincial court would sit.

4.20 That all courts sit at any Aboriginal community in the province at the request of the parties and the community.

4.21 That the Government of Alberta review the process of court attendance of Aboriginal accused persons, witnesses and jurors, and that allowable expenses to get to court be increased, or transportation be made available.

4.22 That the Alberta Government, through Legal Aid or a public defenders' system, ensure that legal representation is provided to Aboriginal people at every stage in the criminal justice system, from arrest through trial, and that this service be made available on a 24-hour basis and be culturally sensitive.

Term of Reference:

Courts 4(b)

to determine whether and to what extent differences exist in sentencing practices as between Indian and Metis people and non-Indian and non-Metis people in the sentencing process.

The Task Force Recommends:

4.23 That, when imposing a custodial sentence or a fine, the Judge should always take into account time spent in custody.

Term of Reference

Courts 4 (h)

to determine the extent to which Indian and Metis people are imprisoned due specifically to their inability to pay a fine or use a fine option program.

Term of Reference

Courts 4(e)

to determine whether alternatives to imprisonment that may be available to non-Indian and non-Metis people are also available to Indian and Metis people and whether there are any barriers to their having access to those programs.

The Task Force Recommends:

4.24 That the Province of Alberta establish Elder sentencing panels to assist Judges in the sentencing of convicted Aboriginal persons.

4.25 That alternatives to incarceration for fine default be explored specifically for poor Aboriginal offenders, and most specifically for female Aboriginal offenders.

4.26 That Judges refrain from keeping "black books" on poor Aboriginal offenders in the determination of allowing for time to pay fine defaulters.

4.27 That more pre-sentence and pre-disposition reports be ordered by Judges for Aboriginal adult and young offenders, and that these reports be culturally sensitive and reflective of the community sentiment.

4.28 That accused Aboriginal persons with alcohol and drug addictions be recommended for treatment at the time of sentence, and that such recommendations be endorsed on the warrant of committal.

4.29 That, when and where appropriate, the Judge adjourn the passing of sentence to allow the accused person to obtain treatment, and that when it is demonstrated that the accused has received treatment, the Judge take this information into consideration when imposing sentence.

4.30 That pre-sentence reports on Aboriginal offenders with an apparent alcohol or drug problem include information about the accused person's problem and treatment that may be available.

4.31 That an adequate number of treatment facilities for Aboriginal offenders with alcohol and drug addictions be established in Alberta.

4.32 That more Aboriginal probation officers be recruited and trained to enable the criminal justice system to respond to the provision of culturally sensitive information in pre-sentence and pre-disposition reports.

4.33 That the Government of Alberta address the problem of the unavailability of appropriate facilities in rural and remote Alberta, to permit the carrying out of intermittent sentences which have a disproportionate impact on Aboriginals.

Term of Reference

Courts 4(g)

to examine whether and the extent to which differences exist in the provision of bail, release on own recognizance or other forms of conditional release prior to trial or adjudication between Indian and Metis people and non-Indian and non-Metis people.

The Task Force Recommends:

4.34 **That the suggestion of the Elizabeth Fry Society of Calgary be adopted to reinstate the Bail Assistance Program, and that it be modified to one specific to Aboriginals because of their specific problems with respect to bail.**

4.35 **That culturally sensitive bail criteria be developed for Aboriginal accused persons.**

4.36 **That an Elder sponsorship alternative to bail be studied and developed.**

4.37 **That cash bail requirements not be applied to poor Aboriginal accused persons, in particular not to those who are living on welfare.**

4.38 **That, where cash bail is appropriate, Band Councils establish a fund for assistance to Reserve residents.**

4.39 **That Aboriginal people be summonsed regularly for jury duty throughout Alberta.**

4.40 **That courtrooms serving Aboriginal communities be sensitized physically to Aboriginal culture, and be arranged in a less intimidating manner.**

4.41 **That Aboriginal persons giving evidence in court be permitted to swear an oath in a traditional way by, for example, by swearing an oath on a pipe or being cleansed with sweet grass.**

5.0 Judges, Prosecutors and Lawyers

Term of Reference:

Judges, Prosecutors and Lawyers 5.0

to determine whether and the extent to which differences exist in the exercise of prosecutorial discretion between Indian and Metis people and non-Indian and non-Metis people.

The Task Force Recommends:

5.1 That, in view of their apparent lack of knowledge about Aboriginal culture, Judges, lawyers, and Prosecutors receive cross-cultural education immediately, intensively, and on an on-going basis. The person in charge of education for each group should be given this responsibility.

5.2 That throughout the legal process, Judges be more sensitive and take into consideration cultural and socio-economic factors when Aboriginal people appear before them.

5.3 That Judges ensure that Aboriginal accused persons have been advised of all their rights and fully understand the legal process when they appear in court.

5.4 That prosecutors strictly adhere to principles of fairness and justice and before proceeding, the Prosecutor be satisfied that proceeding with a case is in the interest of the public.

5.5 That the concept of plea bargaining be reviewed by Crown Prosecutors and defence lawyers to establish ground rules on which plea bargaining may be based.

5.6 That no plea bargain be concluded without the informed consent of the Aboriginal accused person.

5.7 That the Attorney General of Alberta establish policy for the diversion of Aboriginal adults and that multiple charges be closely scrutinized and discouraged by Crown prosecutors.

5.8 That defence counsel always act in the best interest of Aboriginal clients by familiarizing themselves with the total situation of the accused person, by guarding against spurious charges, by educating clients about the legal process, by considering only legitimate plea bargain offers, and by refraining from raising expectations about reduction of charges and/or sentences.

6.0 Corrections

The Task Force Recommends:

6.1 That the number of meetings be increased between agents of the criminal justice system (defence counsel, Crown Prosecutor, Judges) and those agents of the criminal justice system who are involved in implementing a sentence (for example, federal and provincial Solicitor General Departments), and that participation in these meetings be broadened.

6.2 That there be regular meetings between service providers (for example, Native Counselling Service of Alberta, Poundmaker's Lodge, the Elizabeth Fry Society) involved in the criminal justice system before sentence, and corrections and community corrections/supervision personnel to discuss problems and other matters related to the person in conflict with the law.

6.3 That ways be found to provide information and feedback to Prosecutors, Judges, and defence lawyers regarding viable and effective sentencing options for Aboriginals. Possible resources could be sentencing "experts", sentencing panels, and community groups.

6.4 That there be regular meetings between the National Parole Board, the Correctional Service of Canada and the provincial Solicitor General's Department specifically with respect to Aboriginal issues, to ensure uniformity and consistency in the application of programs and standards.

Term of Reference:

Corrections 6 (a)

to examine the current admission rates/numbers, incarceration rates/numbers, average sentence and average length of time served in prison by Indian and Metis people in comparison to non-Indian and non-Metis people.

Term of Reference:

Corrections 6 (b)

To examine existing policies and practices to determine whether there are any discrepancies between Indian and Metis and non-Indian and non-Metis people respecting

(i) prisoner classification, case management techniques, release criteria and the availability of programs to Indian and Metis people while in custody, and

(ii) the criteria for entry to community release programs and the rate of early release of Indian and Metis people.

The Task Force Recommends:

6.5 That all Aboriginal accused persons who are subject to lengthy remands (in excess of three months) be given access, at their request, to the same programming as sentenced offenders in the same security level.

6.6 That short term remanded accused persons be given access to urban life-skills programming.

6.7 That remand facilities such as the Edmonton Remand Centre not be used for individuals who require less than medium security control.

6.8 That the Solicitor General's Department review innovative remand procedures, for example, electronic monitoring and other restraint procedures that would allow an Aboriginal person to remain at home or in the home community.

6.9 That reporting centres throughout the province be used in lieu of "in custody remands" for minimum security offenders or that more extensive use be made of existing reporting centres.

6.10 That Aboriginal persons on remand in correctional facilities be given adequate access to their community support system of family and friends while awaiting trial.

6.11 That Aboriginal communities be involved in bail release programs (see recommendation 6.91).

6.12 That a maximum time be established within which trials must be held during which people may be detained in custody pending final disposition of their charges.

6.13 That the Correctional Service of Canada reassess the concept of reception programs in Alberta to allow for a more informal and personal evaluation and assessment of new Aboriginal inmates. Security designation should be based not only on written documentation but also on information obtained from staff-inmate interaction. Staff members should be oriented towards obtaining first-hand information based on their observations when they confirm the appropriate security designation. The time during which this is done can also be used to provide inmates with factual information about the Correctional Service of Canada and the institution. It is not possible to achieve this goal if inmates are not housed in a specifically designated reception area.

6.14 That Aboriginal inmates be classified as minimum to medium security unless it has been demonstrated that a higher security level is warranted.

6.15 That assessment criteria be reviewed to eliminate gender bias and bias against Aboriginals.

6.16 That the provincial Solicitor General's Department and the Correctional Service of Canada make a concerted effort to ensure that assessment opportunities with Aboriginal cultural content or reflecting an Aboriginal world view (both Indian and Metis) are available to Aboriginal inmates who wish to undergo Aboriginal culturally appropriate assessments, and that these assessments be conducted by Aboriginal assessors.

6.17 That the National Parole Board and Temporary Absence Committees review criteria for release and discuss the practical implications of these criteria with respect to Aboriginal lifestyles and culture.

6.18 That documents used in the case management process be examined for cultural sensitivity and amended where necessary.

6.19 That the case management procedure be reviewed to give Aboriginal inmates more time and more effective participation in the process.

6.20 That the the Correctional Service of Canada and provincial Solicitor General's Department establish liaison with Aboriginal community groups who have indicated an interest and are willing to become involved in the parole or temporary absence program, to facilitate the involvement of Aboriginal communities in, for example, supervision or sponsorship of release.

6.21 That the Correctional Service of Canada and the provincial Solicitor General's Department establish liaison with Aboriginal community-based agencies to provide information about the parole or temporary absence program and to facilitate the Aboriginal community's involvement with Aboriginal correction facilities and with community correction facilities.

6.22 That more Aboriginal individuals be appointed to the National Parole Board.

6.23 That hearings of the National Parole Board be held in public.

6.24 That the National Parole Board advise Aboriginal inmates at least seven days in advance of the date and time of their hearing.

6.25 That the National Parole Board advise Aboriginal inmates that a translator will be made available at their request.

6.26 That National Parole Board members receive initial and regularly recurring cross-cultural training relating to Aboriginal culture and society.

6.27 That the National Parole Board sitting in Alberta have Alberta members and sit in all facilities that house Aboriginal inmates.

6.28 That the National Parole Board adopt the goal of ensuring that Aboriginal residents of Alberta be heard by Alberta members of the Board.

6.29 That Aboriginal spirituality be formally recognized as one of the criteria in the release policies of the National Parole Board.

6.30 That National Parole Board hearings involving Aboriginal individuals be informal, and apply Aboriginal spiritual practices, both Indian and Metis, where appropriate. A sweet grass ceremony, Aboriginal art on the walls, seating in a circle, and allowance for informal dress may assist the information-gathering process.

6.31 That the National Parole Board, Temporary Absence Committees, and the provincial and federal Solicitor General's Departments, recognize in policy that the Aboriginal concept of family is not the same as that of non-Aboriginals, and that the concept of extended family be included in all programming and decision making.

6.32 That the recommendations regarding the urgent need for half-way houses in Alberta for Aboriginal women, made by the Task Force on Federally Sentenced Women (page 149), be adopted.

6.33 That assistance be given to local communities to develop and involve local residents in the provision of appropriate supervision of parole and temporary absence, and that supervisors be paid reasonably for their services.

6.34 That training be provided to members of the National Parole Board and Temporary Absence Committees to sensitize them to the nature of Aboriginal communities, norms, and Aboriginal spiritual healing practices.

6.35 That the National Parole Board and Temporary Absence Committees view an Aboriginal's participation in Aboriginal cultural and spiritual activities as an important contributor to change.

6.36 That, when applications are reviewed, made by Aboriginal inmates from Alberta whose intention it is to return to a reserve or Metis Settlement or predominantly Aboriginal community, the National Parole Board and Temporary Absence Committees be composed of Aboriginal members from Alberta where possible.

6.37 That the temporary absence process be reviewed by the Government of Alberta to ensure that an applicant receives due process.

Term of Reference:

Corrections 6(c)

To review existing correctional centre programs for both men and women to determine:

i. the nature and content of programs for both young offenders and adult offenders,

ii. *whether there is sufficient attention being given to the general needs and concerns of Indian and Metis People, including educational, personal development, drug and alcohol abuse and other programs of importance to the Indian and Metis people who are seeking to become more productive on release from prison, and*

iii. *whether there is sufficient attention being given to the special needs and concerns of Indian and Metis people in view of their cultural and spiritual heritage.*

The Task Force Recommends:

6.38 That the government consider enacting legislation which provides for actual incarceration of Aboriginals only when incarceration sentences total six months or more.

6.39 That every major correctional institution in Alberta have an alcohol and substance abuse treatment program aimed at Aboriginal inmates and designed to attract participation by Aboriginal inmates. These programs should be of sufficient duration and be offered regularly so that they are available to all inmates serving substantial sentences within the correctional institution.

6.40 That correctional facilities provide culturally sensitive programming including programs such as alcohol and substance abuse treatment, employment readiness, physical and sexual abuse survival, life-skills and other relevant training.

6.41 That the provincial Solicitor General's Department and the Correctional Service of Canada identify programming required specifically for Aboriginal women and that such programming be implemented in all Alberta facilities housing Aboriginal women.

6.42 That the federal and provincial governments establish funding for programming as a priority, and direct its attention to community release programs and prevention programs.

6.43 That the feasibility of evaluating the effectiveness of current alcohol and treatment methods be reviewed.

6.44 That correctional facilities provide live-in arrangements for infant children of new mothers incarcerated in provincial correctional institutions.

6.45 That the provincial and federal Solicitor General Departments ensure that the position of Native Liaison Worker or Program Coordinator allows the individual in that role both sufficient access to policy makers, and an opportunity to advocate on behalf on individual Aboriginal inmates in an effective manner.

6.46 That every institution in the province which houses Aboriginal people, including remand and young offender facilities, should have the services of at least one full-time equivalent Elder. Where numbers warrant, there should be two Elders with pay.

6.47 That Aboriginal Elders within correctional institutions be provided the same status, freedom and independence that is granted Christian and other religious service providers.

6.48 That institutional administrators be open to a broader concept of Aboriginal spirituality and culture and be more receptive to the expression of Aboriginal heritage by Aboriginal inmates in terms of religion, dress and cultural activities.

6.49 That Aboriginal community-based release facilities involve in their program development and delivery male and female Elders who are community members.

6.50 That a space within institutions be designated as a cultural centre for exclusive use by Aboriginal inmates.

6.51 That funding for contracts for the specific provision of services for Aboriginals be reviewed. Many programs currently provided on an annual basis do not allow for sufficient time for the service providers to become familiar enough with the clientele and the institution to provide a consistent and effective service.

6.52 That a budget be allocated within the corrections budget, specifically for Aboriginal activities and programs. It is desirable that Native Brotherhoods be actively involved in the process of developing institutional priorities for Aboriginal programming and that they have input into the expenditure of resources allocated for these programs.

6.53 That the number of half-way houses, community minimum security facilities, open custody facilities and secure custody facilities be increased throughout the province.

6.54 That these facilities be designed for use as multi-purpose community-based facilities with, for example, a program to allow accused persons on remand to report to a designated facility.

6.55 That the goal be adopted of placing all minimum security serving prisoners in facilities in their home community for their entire sentence.

6.56 That representatives of the federal and provincial corrections services work with Aboriginal communities to explain the role of release-oriented correctional facilities and invite input from the communities with respect to program development and delivery.

6.57 That an urban cultural program centre for multi-purpose community programs be established in urban centres, which would encourage Aboriginals in conflict with the law and Aboriginals in general to become involved in their spiritual and cultural heritage. We suggest that this be a community initiative supported by the Correctional Service of Canada and the provincial Department of the Solicitor General.

6.58 That the provincial government strengthen the existence and advocate the use of home placement custody and mixed group housing custody as alternatives to traditional correctional facilities.

6.59 That the provincial Correctional Services Division review the internal disciplinary procedure governing institutions, and provide for an independent chairperson to determine disciplinary conduct. We suggest that the independent chairperson be a person who is familiar with the concept of due process.

6.60 That the internal disciplinary procedure in federal and provincial correctional institutions be explained clearly to inmates in terms of offences and procedure.

6.61 That disciplinary hearings be conducted in accordance with the principles of due process.

6.62 That Aboriginal inmates be allowed the assistance of advisors whenever they are a complainant or accused person in disciplinary procedures.

Term of Reference:

Corrections 6(d)

To determine the extent to which Indian and Metis Elders and other respected Indian and Metis leaders, organizations, and associations are presently involved in program development and delivery and in providing advice to senior correctional officials, and to determine how Indian and Metis people can become more involved in the correctional system in a productive and positive manner.

The Task Force Recommends:

6.63 That more Aboriginal employees be hired in all aspects of corrections including management and administration.

6.64 That the provincial government initiate the development of innovative and effective recruitment programs and policies to target Aboriginal individuals specifically, and that agencies enlist the assistance of Indian and Metis organizations in the development and implementation of such programs.

6.65 That programs be developed to provide upgrading and orientation programs to potential Aboriginal employees.

6.66 That managers educate themselves about the many roles an Aboriginal employee can play, and enter into discussions with Aboriginal staff members.

6.67 That management establish liaison with the Union and with employees to educate them about Aboriginal employment programs, so that objectives are understood.

6.68 That correctional administrators ensure that the work environment is receptive to Aboriginal employees from a non-Aboriginal perspective as well as from the Aboriginal employee's perspective, and encourage appropriate support groups or support mechanisms, including making Elders available to staff.

6.69 That regular meetings be held between representatives of the Indian Association of Alberta and Metis Association of Alberta, Chiefs, Band Councils, Metis Settlement Councils and Metis locals, and representatives of the Solicitor General's department and the Correctional Service of Canada. Meetings should be held in various geographic areas of Alberta, to discuss correctional facilities, to exchange information, and to establish and maintain liaison between community and institution.

6.70 That federal and provincial Corrections make a concerted and sustained effort to encourage Aboriginal community involvement in correctional institutions. This may require a re-evaluation of screening criteria for security clearance.

6.71 That federal and provincial Corrections Services encourage community involvement in the delivery of correctional programs and services including closed and open custody facilities for young offenders, minimum security facilities for adults, and treatment and diversion programs. Different groups may be interested in or capable of assuming responsibilities for different programs or services. Community efforts in this aspect of corrections must be reviewed in a supportive manner. Diversion and after-release programs, particularly directed at young offenders, should be encouraged.

6.72 That the federal government review the pardon procedure for Aboriginal persons for the purpose of speeding up the process.

6.73 That federal and provincial corrections develop clear policy on the impact of a criminal record on the limiting of visitor access to inmates and inmate access to prison programs. This policy must be culturally sensitive and not limit access because of minor offences or system-related offences such as "failure to appear."

6.74 That correction staff members who work or have contact with or make decisions about Metis and Indian inmates receive Aboriginal awareness training when they begin employment, and on a regular basis thereafter. All staff members, from frontline staff to the most senior administrators, should be included.

6.75 That content of a training program be designed for providing an understanding of Indian and Metis culture, history, heritage, religion and current situations.

6.76 That the program be provided where possible by Aboriginal instructors in an Aboriginal context, and that, where appropriate, Indian and Metis inmates and staff members who are knowledgeable and willing to participate be involved in delivery.

6.77 That the cross-cultural training program address issues and concerns specific to the work of correctional staff members. For example, if the institution houses Cree people primarily, the program should emphasize Cree customs, language, culture, and values. If the institution houses primarily Metis people, the emphasis should be on Metis culture and spirituality. Issues of relevance to the work place should be discussed, for example, the handling of sacred bundles, or appropriate behaviour when escorting an Aboriginal inmate to a funeral.

6.78 That the Aboriginal Awareness Training Program involve an Elder and members of the Aboriginal community at large to interact with participating staff members.

Term of Reference:

Corrections 6(e)

To examine the level of interest in Indian and Metis Communities and among Indian and Metis Leaders and organizations in taking on a more active role in the delivery of community based correctional programs and crime prevention initiatives.

The Task Force Recommends:

6.79 That the Fine Option program be reviewed to ensure that work is available in the Aboriginal community which has the approval of the community and is sensitive to the needs of the community.

6.80 That the work be done in the Aboriginal offender's community or if not possible, in another Aboriginal community. In urban centres, local native organizations should be consulted for appropriate assignments, beneficiaries, and supervision.

6.81 That the work be broadened to include some rehabilitative merit. Examples may be: working with an Elder or providing service to the band, band council or settlement council.

6.82 That the supervision of Fine Option programs be made more effective.

6.83 That Fine Option programs involve community members in the supervision of work. For example, local people could be designated as assistant probation officers.

6.84 That some provision be made for the participation of the community or the extended family in the discharge of work commitments if the community or family considers it appropriate to do so.

6.85 That local probation officers or assistant probation officers be employed.

6.86 That probation officers and assistant probation officers work closely with Elders and community groups who have shown interest in the criminal justice system.

6.87 That the court demand and receive adequate information to make a probation order that is general enough to allow latitude but specific enough to provide a firm structure within which the offender may operate.

6.88 That resources be pooled and coordinated to provide decentralized facilities and counselling particularly with respect to alcohol and drug abuse, parenting skills, job readiness programs, physical and sexual abuse survivor programs, anger management, and life-skills.

6.89 That Justices of the Peace and Judges review with Aboriginal peoples the criteria currently used for release, and ensure that conditions imposed are culturally sensitive and realistic.

6.90 That Aboriginal communities become involved in assisting accused Aboriginals in satisfying the court that they will keep the peace, be of good behaviour, and return to the court for their appearance dates. This could be accomplished, for example, by providing minimum security custody homes or participating in bail option schemes such as the John Howard Society's program.

6.91 That conditions such as posting a bond, promising to refrain from associating with individuals with a criminal background, refraining absolutely from the use of alcohol, maintaining suitable employment, or maintaining a fixed address be recognized as being culturally insensitive and possibly unnecessary.

6.92 That a review be done of the concept of the bail program formerly operated by the John Howard Society, and that it be reinstituted at the initiative of an Aboriginal service provider.

6.93 That a program be developed with the assistance of the Aboriginal community to provide assistance and support to the police, the Justice of the Peace, and the Aboriginal accused person before a Judicial Interim Release hearing is held.

6.94 That Aboriginal-specific cross-cultural training be incorporated as an integral part of initial training for Justices of the Peace, and be repeated periodically during the course of their careers. Training should be developed and delivered by Aboriginal people.

6.95 That the length of time it takes to finally resolve a matter in youth court be corrected by the Province of Alberta. At present, the delays are intolerable and deplorable.

6.96 That young offenders be detained in detention centres only as a last resort.

6.97 That efforts be expanded to develop or locate appropriate facilities to house young offenders who have no place to go, and that these facilities not be correctional facilities.

6.98 That alternative measures programs be expanded to be more available to Aboriginal offenders.

6.99 That the Department of the Attorney General review alternative measures programs to expand them to include re-offenders and a broader range of offences.

6.100 That Aboriginal awareness programs and culturally appropriate programs be more widely available in young offenders' centres.

6.101 That formal alcohol and substance abuse treatment programs for Aboriginal youth such as the St. Paul facility be extended and expanded throughout the province.

6.102 That the number of Aboriginal staff members within the Young Offender centres be increased.

6.103 That alternative measures programs be instituted and administered by the community at the encouragement of the Department of the Attorney General.

7.0 Native Counselling Services of Alberta

Term of Reference:

Native Counselling Services of Alberta 7(a)

To examine the effectiveness of the working relationships between Native Counselling Services of Alberta (N.C.S.A.) and the police community, the courts, the correctional systems, both federal and provincial, the Indian and Metis communities and individuals and the Indian and Metis leadership, organizations and associations.

Term of Reference:

Native Counselling Services of Alberta 7(b)

to identify to the extent possible methods of improving services through the N.C.S.A. or through other organizations or service delivery options.

The Task Force Recommends:

7.1 That Native Counselling Services of Alberta attempt to employ local people in community service positions who speak the local Aboriginal language.

7.2 That Native Counselling Services of Alberta focus on training and assisting community-based organizations which provide services in the criminal justice system.

7.3 That representatives of Native Counselling Services of Alberta or Aboriginal liaison officers be provided at city cells, lock-up facilities, and remand facilities.

7.4 That the government and the criminal justice system view Native Counselling Services of Alberta as only one of many potential sources of information, assistance, and service to Aboriginal people.

8.0 Additional Considerations

Term of Reference:

Additional Considerations 8(a)

to identify and describe other areas of concern that contribute to Indian and Metis people becoming involved in the criminal justice system in the first instance, and to recommend other steps that can be taken to more effectively address those areas of concern.

The Task Force Recommends:

8.1 That the Department of Education and the Indian and Metis communities develop curricula to include instruction on Indian and Metis history, culture and traditions. Such instruction should begin in the lowest possible grade in all schools in Alberta.

8.2 That Aboriginal children be educated about the history, culture, and religions of the dominant society.

8.3 That Aboriginal children be instructed in urban life-skills.

8.4 That community legal education programs be developed for Aboriginal communities, and that Judges, Prosecutors and defence counsel be encouraged to instruct these programs.

8.5 That there be adequate treatment centres and sufficient beds in treatment centres to accommodate Aboriginals who require treatment or are recommended for treatment.

8.6 That Correctional Services Canada and the Correctional Services Division in Alberta enter into contract with Aboriginal treatment centres, and pay for more beds for inmates of the federal penitentiaries and provincial correction centres.

8.7 That the Government establish regional alcohol treatment centres for young offenders, similar to Poundmaker's Lodge and St. Paul.

8.8 That the Government recognize and be prepared to fund the treatment and counselling of families of alcoholics.

8.9 That Aboriginal communities be assisted in establishing a viable economic base to provide employment and that incentives be provided to Aboriginals for remaining in the community.

8.10 That, because many Aboriginal communities have an inadequate resource and economic base, the resources available be allocated equitably and without favour.

8.11 That urban centres recognize and be prepared for a continuing influx of Aboriginals.

8.12 That Aboriginal awareness seminars and programs be provided to sensitize all criminal justice personnel to Aboriginal culture and the issues and problems faced by Aboriginal people. Public education of society at large about these matters is also needed.

8.13 That the criminal justice system employ Aboriginals to ensure fair and equitable representation of Aboriginal people.

8.14 That criminal justice agencies in Alberta establish a firm position to discourage and penalize discriminatory or racist actions or expressions at any level of the criminal justice system.

Term of Reference

Additional Considerations 8(b)

to identify areas of jurisdictional interaction or overlap between the federal and provincial governments that tend to impede actions and decisions within the corrections system to the detriment of Indian and Metis offenders.

Term of Reference:

Additional Considerations 8(c)

to determine how the various departments of the Government of Alberta that provide services to Indian and Metis people can more effectively coordinate various services and programs to the benefit of the Indian and Metis people in such a manner as to reduce the number of Indian and Metis people coming into contact with the criminal justice system.

The Task Force Recommends:

8.15 That a clear policy statement be developed by Government on the purpose of the criminal justice system in Alberta and that such a statement be accompanied by co-ordinated action from various components of the system to achieve the stated goal.

8.16 That a Minister of Indian and Metis Affairs be appointed.

The Task Force Recommends as Alternatives:

8.17 (a1) That a Cabinet Committee on Indian and Metis Affairs be established.

8.18 (a2) That, as a last alternative, a Commission, Board, or Committee of senior representatives of Government, Indians, and Metis be established to address the concerns of Indian and Metis.

Term of Reference

Additional Considerations 8(d)

to review the cross-cultural training provided to the Judiciary, Crown Prosecutors, Legal Aid personnel and Correctional personnel to determine if existing training is adequate and to make any recommendations necessary to ensure the development of comprehensive and effective programs.

The Task Force Recommends:

8.19 That the Attorney General's Department prepare a policy statement on Aboriginal awareness training specifically recognizing the need for extensive Aboriginal awareness training for all personnel including: Crown Prosecutors, Justices of the Peace and the Judiciary.

8.20 That induction and regular Aboriginal awareness training be provided to all Alberta Government personnel working in the criminal justice system.

8.21 That the Government of Alberta investigate the feasibility of establishing a comprehensive and effective Aboriginal awareness training program for provincial government employees. The development of any centralized training program should include extensive consultation between the Aboriginal community, educational facilities, and service agencies.

8.22 That all Aboriginal awareness training programs be comprehensive and interactional in format, be delivered by Aboriginal people, and contain a component which is offered on an Indian Reserve or Metis Settlement.

8.23 That Judges at all levels of Court receive Aboriginal awareness training on appointment, and that all Judges who deal with Aboriginal people receive additional Aboriginal awareness training.

8.24 That all Aboriginal awareness training programs recognize and address the distinctiveness of Indian people and Metis people.

Term of Reference:

Additional Considerations 8(e)

to determine to what extent Indian and Metis people are presently employed in the various components of the Criminal Justice System in Alberta and to propose policy changes that would result in a higher level of employment.

The Task Force Recommends:

8.25 That Section X of the Alberta Government Recruitment and Selection Manual be amended to create an affirmative action or preferential hiring policy for Aboriginal people. In addition, the "Personnel Policies and Procedures Manual" should be updated to reflect the substance of the affirmative action policy.

8.26 That Aboriginal people be consulted in the process of the development of an affirmative action policy. Such consultation serves to ensure that the policy is developed in partnership, that Aboriginal people understand and support the policy, and, most importantly, that they will participate in any resulting program.

8.27 That affirmative action policy include defined targets for Aboriginal employment and established deadlines to reach these targets.

8.28 That the Personnel Administration Office of the Government of Alberta, in conjunction with the office recommended under this report, be responsible for developing affirmative action policy and for monitoring the compliance of government departments with that.

8.29 That departments which develop Aboriginal recruitment initiatives include in these initiatives:

(i) more culturally sensitive and appropriate recruitment techniques;

(ii) cluster or group hiring strategies, where appropriate;

(iii) recognition and use of existing Aboriginal organizations to assist in recruitment;

(iv) pre-application training programs, where appropriate;

(v) a more imaginative and flexible approach in assessing the qualities, experience, and skills of Aboriginal people as alternatives to formal educational qualifications.

8.30 That recruitment initiatives be developed to hire Aboriginal people into management, supervisory, professional, and administrative positions as well as entry level positions.

8.31 That when Aboriginal staff have been recruited, government departments ensure that substantial support mechanisms are in place. Support mechanisms should include:

(i) support groups for Aboriginal employees;

(ii) resource individual(s) for Aboriginal employees;

(iii) Aboriginal-specific induction training;

(iv) a specific formal process for dealing with complaints from Aboriginal employees;

(v) making Aboriginal Elders available for support to Aboriginal staff.

8.32 That executive managers of government departments create a receptive work environment for Aboriginal employees. Activities which can contribute to a positive work environment for Aboriginal people include:

(i) ensuring that all levels of management are educated and informed about the objectives of affirmative action initiatives and about the potential roles for Aboriginal employees;

(ii) ensuring that management maintain liaison with unions and non-Aboriginal employees to educate them about the objectives of Aboriginal employment programs;

(iii) ensuring that a mechanism exists for management and supervisory staff to enter into a dialogue with Aboriginal staff;

(iv) encouraging Aboriginal people to express their culture;

(v) establishing a firm position on discouraging and penalizing, at any level in the organization, actions or expressions of a discriminatory or racist nature.

8.33 That promotional opportunities for Aboriginal employees be addressed, including:

(i) the development of training programs for promotional opportunities;

(ii) the placement of Aboriginal employees for trial periods in promotional situations;

8.34 That none of the foregoing recommendations be used in any way to impede initiatives undertaken by Aboriginal communities and government departments aimed at giving Aboriginal people greater involvement in and control of the various components of the criminal justice system.

Women and Youth

Term of Reference:

Additional Considerations 8(f)

to identify areas of concern as they relate to the special needs of Indian and Metis youth and women as they are affected by the areas under review.

The Task Force Further Recommends:

8.35 That the Government establish a sufficient number of half-way houses for Aboriginal women, and that these half-way houses be staffed by Aboriginal women.

8.36 That, when the police interview an Aboriginal woman, the examination be conducted preferably by a female officer, or if this is not possible, in the presence of an Aboriginal woman.

8.37 That when police find it necessary to arrest an Aboriginal for an incident involving family violence, the criminal justice system employ culturally sensitive diversion programs to attempt to resolve the family conflict.

8.38 That Canada, Alberta and Indian and Metis organizations develop holistic Aboriginal family-oriented counselling services and male-oriented counselling centres.

8.39 That the Aboriginal communities be encouraged and assisted in developing safe houses for Aboriginal women, especially in remote and rural communities.

8.40 That Indian and Metis organizations, together with reserves, settlements, and urban and rural communities, develop crises response teams.

The Task Force Recommends:

8.41 That alcohol and drug abuse treatment centres be de-centralized and be established where required.

8.42 That Aboriginal youths in a Correction Centre who require treatment for alcohol and drug abuse be given intensive drug and alcohol treatment in a Young Offender Centre if they are unable to be placed in a treatment centre.

8.43 That additional youth emergency centres, preferably community-based, be established to give the Courts an alternative to remanding youths in custody.

8.44 That private homes be contracted to accept, for a limited time, homeless Aboriginal youth released from Young Offender Centres.

8.45 That programs offered to Indian and Metis youth be Indian and Metis-specific, that these programs be delivered by Indian and Metis persons, and that such programming recognize the difference between Indians and Metis as well as the difference in needs between urban youth and youth from isolated rural areas.

8.46 That Indian and Metis leaders and Elders respond to the need for Indian and Metis youth to learn their history, culture, and traditions and their need for the guidance of Elders.

8.47 That Aboriginal communities in conjunction with the Alberta Department of Recreation and Parks, develop a comprehensive framework to address the barriers which prevent the establishment of recreational and leisure services for Aboriginal people.

8.48 That as part of their elementary or junior high education, Aboriginals be given instruction on urban life skills.

8.49 That Indian and Metis organizations, Bands, and Settlements be actively involved in child welfare matters, and that this involvement be facilitated by Canada and Alberta.

8.50 That the Task Force Implementation Committee and the Aboriginal Justice Committee monitor the operation of the protocol between the Solicitor General and the Department of Social Services to ensure an integrated approach to dealing with youth having status with social service who are involved with Youth Court or the Young Offender Centre.

10.0Ongoing Process

Term of Reference:

Ongoing Process 9.0

to formulate a process for the ongoing monitoring and upgrading of programs and initiatives implemented pursuant to the recommendations of the Task Force.

The Task Force Recommends:

10.1 Short Term: This Task Force was created by an Alberta Order-In-Council. Consequently, we have been hesitant to place too heavy an onus on the Government of Canada for implementation of recommendations. We recommend that the Government of Alberta establish a committee which could be called the Task Force Monitoring Committee. One member would be appointed by Canada, one by Alberta, one member appointed by the Indians and one by the Metis. The Chairman should be chosen by the Committee and should not be one of the appointees. If the Committee cannot agree on the appointment of the Chairman, a Chairman could be appointed by the Government of Alberta. The Chairman would preferably be Aboriginal. The Task Force Monitoring Committee would meet as required. We do not see this Committee as requiring a full-time commitment from its members.

The main objective of the Task Force Monitoring Committee would be the monitoring and up-grading of programs and initiatives implemented pursuant to the recommendations of the Task Force. The Committee should have the power to make enquiries of Government and the criminal justice system, and to investigate components of the criminal justice system, to ensure that the recommendations are implemented. The Committee must have ready access to Ministers, Deputy Ministers, and any other person, organization or institution responsible for the policy or the operation of the criminal justice system. The Committee would meet as required. It should send a quarterly report of its activities and findings to the federal Solicitor General, the federal Minister of Justice, the Solicitor General of Alberta, and the Attorney General of Alberta. Within a year after its establishment, the Committee would table a Report of its proceedings. Recommendations for implementation should be made at that time to the Speaker of the Legislative Assembly of Alberta, to be tabled before the Legislative Assembly. A copy of this Report would be forwarded to the federal Solicitor General, the federal Minister of Justice, the Indian Association of Alberta, and the Metis Association of Alberta.

10.2 Long Term: We recommend the establishment of an Aboriginal Justice Commission, which, within eighteen months of the filing of the Report of this Task Force with the Alberta Solicitor General, would assume all of the powers and duties of the Task Force Monitoring Committee. The broad mandate of the Aboriginal Justice Commission would be:

i) To assume the duties and powers of the Task Force Monitoring Committee.

ii) To facilitate communication between Indians, Metis, Government and components of the criminal justice system.

iii) To negotiate a framework agreement between the Government of Canada, the Government of Alberta, the Indians, and the Metis which delineates the jurisdictional and financial responsibilities of the Government of Canada and the Government of Alberta toward Indians and Metis with respect to all components of the criminal justice system.

iv) The Aboriginal Justice Commission would employ an Aboriginal Advocate who would accept all complaints against any person or component of the criminal justice system, and who would ensure that all complaints are processed by existing complaint mechanisms in the criminal justice systems. The Aboriginal Advocate would follow a complaint through the mechanisms until it is resolved and appeals, if necessary, are exhausted. The Aboriginal Advocate would keep the complainant informed of the progress of the complaint and advise the complainant the ultimate result. The Aboriginal Advocate would also compile statistical information and monitor the overall level and nature of complaints to identify required policy and procedural changes.

v) The Aboriginal Justice Commission would act as an informed clearing house to assist Aboriginals in directing their concerns about the criminal justice system to the appropriate government department or agency. The Commission would also facilitate contact and communication between Government and Aboriginals. This process should reduce direct contact between Aboriginals and Ministers or Deputy Ministers. It should, however, not preclude Indians and Metis from dealing directly with Ministers and Deputy Ministers.

vi) The Aboriginal Justice Commission would be an informed body which could assist governments and departments in developing policies related to Indians and Metis with respect to the Criminal Justice System.

vii) The Aboriginal Justice Commission should have at least five members: one Metis, one Indian, one appointee of the Government of Canada and one appointee of the Government of Alberta. The Chairman (who should preferably be Aboriginal) should be independent of Government, and be chosen by the other four Commission members. In the event of a tie, the Government of Alberta should appoint the Chairman, who would preferably be an Aboriginal.

viii) The Aboriginal Justice Commission would table a Report of its proceedings and recommendations for implementation to the Speaker of the Legislative Assembly of Alberta. This Report should be tabled before the Legislative Assembly within one year of the creation of the Commission and annually thereafter. Copies should be sent to the Solicitor General of Canada, the Indian Association of Alberta, and the Metis Association of Alberta.

11.0 Alternatives

The Task Force Recommends:

11.1 That we favour the view of the Canadian Bar Association Native Law Subsection. Whether an Aboriginal Justice System should exist and its scope and extent, is a matter for negotiation between the Indian and Metis people and the Governments of Canada and Alberta.

11.2 That the government develop a more streamlined process for entering appearances and pleas in court, perhaps by using the telephone, fax, or some other means of communication.

11.3 That Aboriginal communities become more involved in assisting the police, courts, and corrections in priorizing resources and in using more traditional dispute resolution and healing techniques.

11.4 That the Government of Alberta consider a pilot diversion project involving representatives of the local Aboriginal community, the police, lawyers, Crown Prosecutors, and accused persons to review the circumstances surrounding a charge or proposed charge to determine whether some form of diversion or attempt at diversion is appropriate.

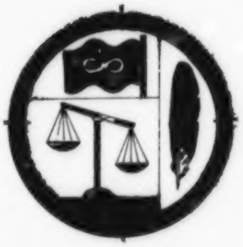
12.0 Review of the Blood Tribe Inquiry Report

Term of Reference

Research 1(b)

to review recent reports respecting Indian and Metis people and the criminal justice system to determine to what extent the findings and recommendations of other reports apply to the Alberta situation including but not limited to

(i) "Justice Behind the Walls" (report of the Canadian Bar Association)
(ii) "Locking Up Natives in Canada" (report of the Canadian Bar Association)
(iii) "Aboriginal People in Federal Corrections" (report of the Solicitor General of Canada)
(iv) "R.C.M.P. Review into Native Policing in Alberta and Across Canada"
(v) "Human Rights Commission Report" (Canada, 1989)



The Cover Design:

The Circle

The circle is important in the cosmology and culture of Aboriginal people. The sun and the moon appear as circles. Cosmological phases manifest themselves as cycles. Aboriginal people have incorporated these into their worldview and culture by adopted wholistic views and values.

The Eagle Feather

Aboriginal people believe that all creation is equal and it is all animate. All animals have a spirit, which is the essence of life. Animals have powers and knowledge that human do not have, but to which they aspire. The eagle is revered for its power and knowledge, for its broad views of the world when in flight and for strength, vision and beauty.

-- Leroy Little Bear

Flags of the Metis

The first flag of the Metis Nation is estimated to have been developed around the period 1814-15 in what is now known as Manitoba. The design was a white 'lazy eight' on a brilliant red background. The meaning of the figure eight placed on its side was two-fold: (1) it represented the symbol for infinity, that is, the Metis nation will last forever; and (2) the coming together of two cultures, Indian and white, to form a distinct new nation. Later, a second flag was developed. This second lag was the white 'lazy eight' set on a royal blue background. The second flag was developed out of historic difference between the English half-breeds and the French Metis. The English half-breeds tended to be employed by the Hudson's Bay Company and flew the blue flag. The French Metis predominantly worked for the North West Company and flew the red flag. Although other flags were developed and flown by the historic Metis nation the white 'lazy eight' is probably the most well known. Both the red and blue version of this flag have been flown throughout history however today the red flag is the one most often flown by the Metis Association of Alberta and the Metis communities throughout Alberta.

-- Cynthia Bertolin

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